Supreme Court, U.S.
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No. ~~OFFICE OF THE CLERK~~

In the Supreme Court of the United States

AMP, DDM, JM, DCM, KMR, AND SMK,
Petitioners,

v.

CWM AND ACM, BY PAM, AND DHM,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE MINNESOTA COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does a state court deprive trust beneficiaries of their property interest and Fourteenth Amendment right to due process by holding that the beneficiaries and the trustee of the trust are precluded by a prior state court paternity adjudication from challenging the beneficiary status of additional claimed biological children of the settlor on the grounds that the purported claimants are not "legitimate" descendants of the settlor, as that term is defined in the trust instrument?

LIST OF PARTIES

Petitioners AMP, DDM, JM, DCM, KMR, and SMK[1] are beneficiaries of the three trusts described in detail in this Petition ("the Trusts").

Respondents CWM and ACM are minors and appear in this litigation through their mother, PAM. Along with Respondent DHM, they claim beneficiary status under the Trusts.

In addition to the parties listed in the caption, William J. Berens and Phillip H. Martin are trustees of the Trusts and are parties to the action below. Trustee William J. Berens is the successor to trustee Robert J. Struyk. The trustees are filing a separate Petition for Writ of Certiorari in this case.

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[1] The original orders of the district court contained the full names of the parties and, because of the sensitive nature of this case, were filed under seal in that court and in the Minnesota appellate courts. In reproducing in the Appendix the district court orders and the order of the Minnesota Supreme Court denying further review, initials have been substituted for the parties' names, in accordance with the practice ordered by the Minnesota Court of Appeals. The substituted initials are indicated by the use of brackets (see, for example, "[AMP]" at App. A-18) and are the same initials used in this Petition and in the decision of the Minnesota Court of Appeals. All other text is reproduced as in the original documents.

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PETITION FOR WRIT OF CERTIORARI

Petitioners AMP, DDM, JM, DCM, KMR, and SMK respectfully petition this Court to issue a writ of certiorari to review the decision of the Minnesota Court of Appeals.

OPINIONS BELOW

The decision of the Minnesota Court of Appeals is reported as *In re Trusteeship of Trust Created under Trust Agreement Dated December 31, 1974*, 674 N.W.2d 222 (Minn. Ct. App. 2004), and is reproduced at App. A-1. The order of the Minnesota Supreme Court denying the Petitioners' Petition for Further Review is unpublished and is reproduced at App. A-18. The underlying orders of the district court for Hennepin County, Minnesota, are unpublished and are reproduced at App. A-20.

JURISDICTION

The decision of the Minnesota Court of Appeals was issued on February 3, 2004. The Minnesota Supreme Court denied the Petitioners' Petition for Further Review on April 20, 2004. Judgment on the decision of the Minnesota Court of Appeals was entered on May 3, 2004. App. A-19. This Court has jurisdiction under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the Constitution provides, in relevant part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1.

STATEMENT OF THE CASE[2]

This case concerns the Petitioners' rights, as the proper beneficiaries of three trusts, to due process of law before being deprived of their property interests in those trusts.

AMP, DDM, JM, DCM, KMR, and SMK ("Petitioners") are the legitimate biological children of JHM. JHM, who is now mentally and physically incapacitated, has been married several times, and Petitioners are his children from his earlier marriages.[3] The Petitioners are beneficiaries of the three irrevocable trusts described below ("the Trusts"), and their status as proper beneficiaries of the Trusts is not at issue here.

JHM was married to his third wife, PAM, from 1979 to 1991. DHM, CWM, and ACM were born to PAM during the time she was married to JHM. These three children were born after the Trusts were established and now assert that they, too, should be recognized as beneficiaries of the Trusts.

All three Trusts specifically exclude from beneficiary status persons who are not legitimate descendants of JHM. In 1974, JHM, as settlor, established the JHM 1974 Trust. The beneficiaries of the JHM 1974 Trust are the "issue" of JHM, defined as "persons who are descended from [JHM] *by legitimate birth* to [him]." Appendix to Appellants' Br. to Minn. Ct. App. at 99 (emphasis added). In 1980, JHM, again as settlor, created the 1980 JHM Family Trust, the beneficiaries of which are the "issue of the first generation" of JHM. *Id.* Also in 1980, SMC, KWM, and LMS, as

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[2] The Petitioners adopt and incorporate by reference the statement of the case contained in the Trustees' separately filed Petition for Writ of Certiorari. *See infra* at 11.

[3] The Petitioners are referred to as "the older children" and "the respondent beneficiaries" in the Minnesota Court of Appeals' opinion. App. A-4.

settlors, established the 1980 SMC Trust, which similarly provides that the "issue" of JHM are to be its beneficiaries. Both the 1980 JHM Family Trust and the 1980 SMC Trust define "issue" as JHM's "lineal descendants . . . *except illegitimate descendants*." *Id.* at 117, 141 (emphasis added). All three Trusts are irrevocable and cannot be amended.[4] The combined value of the Trusts is approximately $900 million. William J. Berens, who succeeded Robert J. Struyk, and Phillip H. Martin are the trustees ("Trustees").

In 1986, after DHM and CWM were born, JHM filed a petition for divorce from PAM that alleged that DHM and CWM are not his biological children. JHM later voluntarily dismissed the divorce petition. In 1991, after ACM was born, JHM and PAM were finally divorced in an uncontested proceeding in a Florida court. As part of the divorce, JHM stipulated to his child support obligations to DHM, CWM, and ACM. But the Florida court made no finding of fact or conclusion of law as to the actual biological relationship between JHM and DHM, CWM, and ACM. Neither the Petitioners nor the Trustees were parties to the 1991 Florida divorce proceeding.

In 1997, the Trustees received information that JHM is not the biological father of DHM, CWM, or ACM. Acting pursuant to their fiduciary duty to ascertain the proper beneficiaries of the Trusts, the Trustees commenced an investigation into whether the three children qualify as beneficiaries. Following the investigation, the Trustees determined that there was a reasonable basis to conclude that DHM, CWM, and ACM are not JHM's biological children and therefore not beneficiaries of the Trusts.

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[4] The terms of each of the Trusts provide: "This agreement and the trust created hereunder shall be in all respects irrevocable and neither I . . . nor any other person shall have any power to modify, amend, or revoke the trust hereunder or this agreement in any respect." Appendix to Appellants' Br. to Minn. Ct. App. at 100; *see also id.* at 116, 140.

In 2000, the Trustees filed a petition under Minn. Stat. § 501B.16 in the district court for Hennepin County, Minnesota, for an order "[a]uthorizing and ordering such proceedings as are reasonably necessary to identify the proper beneficiaries" of the Trusts ("the trust proceeding").[5] The Trustees also moved the court for partial summary judgment, seeking a declaration that only biological descendants of JHM are proper beneficiaries of the Trusts and that DHM, CWM, and ACM are not JHM's "issue" and therefore not proper beneficiaries.[6] The Petitioners were parties to the trust proceeding and supported the Trustees' motion. PAM, on behalf of CWM and ACM, and DHM, who had reached the age of majority (collectively "Respondents"),[7] appeared in the trust proceeding and opposed the motion.

In a June 2002 order, the court granted the Trustees partial summary judgment, construed the trust instruments, and concluded that only JHM's biological or legally adopted children are proper beneficiaries of the Trusts. App. A-30. In February 2003, the court ruled that DHM, CWM, and ACM

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[5] Minn. Stat. § 501B.16 authorizes a trustee of an express trust to "petition the district court for an order: . . . (3) to determine the persons having an interest in . . . the trust and the nature and extent of their interests; (4) to construe, interpret, or reform the terms of a trust . . . or (23) to instruct the trustee, beneficiaries, and any other interested parties in any matter relating to the administration of the trust and the discharge of the trustee's duties."

[6] The Respondents contended that the Petitioners and the Trustees were precluded from challenging paternity in the trust proceeding because of the preclusive effect of the Florida divorce decree. In opposition, the Trustees argued that "[f]undamental principles of law and fairness dictate that parties who are strangers to an action can not be barred from litigating the issues determined in that action." Petr's' Supplemental Mem. in Supp. of Pet'rs' Mot. for Partial Summ. J. at A-7.

[7] In this Petition, "the three children" refers to DHM, CWM, and ACM, and "Respondents" refers to the three children and their mother, PAM.

would be denied status as beneficiaries of the Trusts unless they submitted to genetic testing within a specified time. App. A-20. The Respondents appealed.

On appeal, the Respondents claimed that by operation of state parentage acts and because of the Florida divorce decree, the Petitioners and the Trustees were legally precluded from challenging in the trust proceeding the paternity of DHM, CWM, and ACM. The Petitioners argued that denying them an opportunity to protect their interests in the Trusts by asking the district court to determine proper beneficiaries would be a violation of their rights to due process.[8]

The Minnesota Court of Appeals characterized the trust proceeding as a collateral attack on a determination of paternity made by operation of either Florida law, *see, e.g.*, *D.F. v. Dep't of Revenue ex rel. L.F.*, 823 So. 2d 97 (Fla. 2002), or the Minnesota Parentage Act, Minn. Stat. ch. 257.[9] App. A-11, A-13. Accordingly, the court reversed on the ground that the Petitioners were improperly using the trust proceeding to "challenge a previous determination of

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[8] Br. of Beneficiaries to Minn. Ct. App. at 17 ("Due process requires that those whose rights are to be affected be afforded an opportunity to be heard. *Cleveland Bd. of Education v. Loudermill*, 470 U.S. 532, 542 (1985); *Barton Contracting Co., Inc. v. City of Afton*, 268 N.W.2d 712, 716 (Minn. 1978). In fact, there is a presumption in the law that a nonparty is not bound by a judgment, which presumption stems from due process concerns with the right to be heard and have one's day in court. *See Tice v. American Airlines, Inc.*, 162 F.3d 966, 972-73 (7th Cir. 1998), *reh'g and suggestion for reh'g en banc denied, cert. denied* 527 U.S. 1036 (1999). Any determination of the trust made in a proceeding in which a trustee has no standing constitutes a fundamental denial of due process.").

[9] The court concluded that the case presented a choice-of-law issue because DHM, CWM, and ACM resided in Florida and Minnesota was the situs of the Trusts. Thus, the court provided an analysis of both Florida and Minnesota law. App. A-9.

paternity made consistent with applicable parentage laws." App. A-2.

The Petitioners and the Trustees petitioned for further review in the Minnesota Supreme Court, arguing that the court of appeals' decision deprived them of property without due process.[10] The Respondents cited this Court's decision in *Michael H. v. Gerald D.*, 491 U.S. 110 (1989), for the proposition that the court of appeals' decision did not constitute a due process violation. The Minnesota Supreme Court denied Petitioners' Petition for Further Review on April 20, 2004, App. A-18, and that of the Trustees on April 22, 2004. This Petition for Writ of Certiorari follows.

REASONS FOR GRANTING THE WRIT

I. The Minnesota Court of Appeals violated Petitioners' Fourteenth Amendment rights to due process by holding that the action to determine proper trust beneficiaries was precluded by adjudications of paternity in proceedings in which Petitioners had no opportunity to participate.

The Petitioners and the Trustees, acting on credible evidence that DHM, CWM, and ACM were not the biological children of JHM, exercised their statutory right to seek a determination by the district court of the proper beneficiaries of the Trusts. The Petitioners and the Trustees did not attack any adjudication of paternity under Florida or Minnesota law. The Minnesota Court of Appeals' decision that the Petitioners' rights with respect to the Trusts are cut off by adjudications of paternity, in proceedings in which the

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[10] *E.g.*, Beneficiaries' Pet. for Further Review at 5 ("Due process requires that those whose rights are to be affected be afforded an opportunity to be heard. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985); *Barton Contracting Co., Inc. v. City of Afton*, 268 N.W.2d 712, 716 (Minn. 1978). The Court of Appeals, however, declines to afford such right to the Trustees and to these petitioning beneficiaries.")

Petitioners had no opportunity to participate, deprives the Petitioners of their recognized property interest in the Trusts without due process of law.

The Fourteenth Amendment guarantees that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. The Petitioners have a recognized, federally protected property interest in the Trusts. *See Bd. of Regents v. Roth*, 408 U.S. 564, 571-72 (1972); *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950). Paying distributions to people who are not properly beneficiaries improperly depletes the Trusts' assets and therefore deprives not only the Petitioners but also all proper beneficiaries of their property without due process.

The Minnesota Court of Appeals held that the district court erred by declaring that DHM, CWM, and ACM are not biological children of JHM, for purposes of the Trusts, subject to their submitting to genetic testing to establish the contrary. The court offered two grounds for its holding. First, the court stated that the Respondents' paternity had been established by operation of law in the 1991 uncontested Florida divorce proceeding and that the resulting decree was entitled to full faith and credit from Minnesota courts. App. A-13. Second, the court stated that by operation of the Minnesota Parentage Act, Minn. Stat. ch. 257, the three children are deemed to be the biological children of JHM and therefore the Trustees' "challenge" to the children's paternity in the trust proceeding was not authorized by Minnesota law. App. A-15. The Minnesota Court of Appeals' confusion of two distinct inquiries under the law—paternity and trust-beneficiary status—is an error of constitutional dimension.

The Petitioners do not dispute that a divorce decree or paternity adjudication from a foreign state is entitled to full faith and credit in a Minnesota court. U.S. Const. art. IV, § 1. However, the full faith and credit clause does not mandate that a decision as to "paternity," made in a different

proceeding with different parties and different rights at stake, shall bind a third party with respect to the third party's own property rights based on "legitimacy," as that term is defined by the Trusts. The "'full faith and credit' clause and the act of Congress passed pursuant to it do not entitle a judgment in personam to extraterritorial effect if it be made to appear that it was rendered without jurisdiction over the person sought to be bound." *Baker v. Baker, Eccles, & Co.*, 242 U.S. 394, 401 (1917). "The fundamental requisite of due process of law in judicial proceedings is the opportunity to be heard." *Id.* at 403. "To hold one bound by the judgment who has not had such opportunity is contrary to the first principles of justice." *Id.*

Because the Petitioners had no opportunity to be heard in the divorce or any other Florida "paternity" proceeding concerning the three children, the Minnesota Court of Appeals' decision that the Trustees and Petitioners are bound with respect to the Trusts by the Florida adjudication of paternity violates the Petitioners' Fourteenth Amendment rights to due process.

The same principle is implicated in the court's holding that by operation of the Minnesota Parentage Act, the Petitioners are barred from seeking a judicial determination of the Respondents' beneficiary status in the trust proceeding. The Petitioners had no right or standing to participate in any adjudication of paternity under the Minnesota Parentage Act. Minn. Stat. § 257.57, subd. 1 (stating that only child, mother, or father have standing under Act). "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quotation omitted). The "right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest." *Mullane*, 339 U.S. at 314. Because the Petitioners had no standing to contest paternity under the Minnesota Parentage

Act (or, for that matter, under the Florida Determination of Parentage Act, Fla. Stat. Ann. § 742.011), the holding that the Petitioners cannot seek a determination of beneficiary status under the Trusts deprives the Petitioners of an opportunity to be heard at a meaningful time and in a meaningful manner. Thus, the decision of the Minnesota Court of Appeals violates the Petitioners' Fourteenth Amendment rights to due process.

Moreover, the court of appeals' and Respondents' reliance on *Michael H. v. Gerald D.*, 491 U.S. 110 (1989), is erroneous. The plurality in *Michael H.* rejected the petitioner's claim that he had a constitutionally protected liberty interest in his relationship with his biological daughter. *Michael H.*, 491 U.S. at 127; *but see id.* at 136 (Brennan, J., dissenting) (stating that five members of the Court refuse to foreclose possibility that father may have such a liberty interest). Here, the Petitioners have a constitutionally protected property interest in their distributions under the Trusts, and the court of appeals' misplaced reliance on state parentage acts and *Michael H.* deprives them of that. Moreover, the plurality opinion in *Michael H.* stands for the proposition that the law has traditionally protected the marital family, meaning married individuals who hold a child out as their own, from a claim that the child's biological father has a due process right to visitation and other parental rights. *See id.* at 124. But here, the Petitioners do not challenge the parent-child relationship between JHM and DHM, CWM, and ACM. All the Petitioners asked the court to do was to determine who is a proper beneficiary under the terms of the trust instruments. *Michael H.*, therefore, does not apply to this case.

This case does not concern paternity, the relationship of rights and obligations between a father and child. The validity of any legal determination that may have been made with respect to DHM, CWM, and ACM is not at issue here. However, a beneficiary cannot be denied his or her property interest in a trust, which defines a beneficiary as a

"legitimate" descendant, because of an adjudication of "paternity" in a proceeding in which the beneficiary had no opportunity to participate. Because the Minnesota Court of Appeals has deprived the Petitioners of their property by holding that they are bound by the result of a proceeding in which they had no opportunity to participate, the court's decision violates the Petitioners' Fourteenth Amendment rights to due process.

II. Because courts in different states are relying on *Michael H. v. Gerald D.*, 491 U.S. 110 (1989), to cut off the property rights of trust beneficiaries without due process, the Minnesota Court of Appeals' decision raises an important question of constitutional law that has not been, but should be, settled by this Court.

In holding that the Petitioners could not ask the district court to determine the proper beneficiaries of the Trusts because of the earlier adjudications of paternity under state law, the Minnesota Court of Appeals noted that "[o]ther courts have reached the same conclusion after applying state parentage acts to facts similar to those before us." App. A-16. Specifically, the court relied on *In re Trust Created by Agreement Dated December 20, 1961*, 765 A.2d 746 (N.J. 2001). *Id.* There, the New Jersey Supreme Court, relying exclusively on *Michael H.*, rejected a due process claim made by a trust beneficiary. 765 A.2d at 362-63. The New Jersey Supreme Court and Minnesota Court of Appeals' decisions demonstrate that courts need guidance from this Court as to the due process rights of trust beneficiaries who seek not to attack paternity but to establish genetic fact for purposes of trust administration. If this Court does not intervene, the property rights of beneficiaries of trusts throughout the United States may be cut off without due process. What is more, these cases show that this Court's decision in *Michael H.* has been misunderstood and misapplied. Because of these

developments in the courts of different states, this Court should grant this petition to consider an important constitutional question that has not been, but should be, settled by the Court.

III. Petitioners support and adopt the arguments set forth in Trustees' separate Petition for Writ of Certiorari filed in this case.

The Petitioners agree with, adopt, and incorporate by reference the statement of the case and reasons for granting a writ of certiorari to the Minnesota Court of Appeals contained in the Trustees' independent Petition for Writ of Certiorari in this case, which will be filed separately. *See In re Trusteeship of Trust Created under Trust Agreement Dated Dec. 31, 1974*, 674 N.W.2d 222 (Minn. Ct. App. 2004), *petition for cert. filed sub nom. William J. Berens and Phillip H. Martin, Trustees v. CWM and ACM, by PAM, and DHM* (U.S. July 16, 2004).

CONCLUSION

For the foregoing reasons, the Petitioners respectfully request that this Court grant their Petition for Writ of Certiorari to the Minnesota Court of Appeals.

Respectfully submitted,

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STATE OF MINNESOTA
IN COURT OF APPEALS
A03-454

In the Matter of the Trusteeship of the Trust Created Under Trust Agreement dated December 31, 1974; and

In the Matter of the Trusteeship of the Trust Created Under Trust Agreement Dated December 30, 1980; and

In the Matter of the Trust Created Under Trust Agreement Dated December 30, 1980.

Filed February 3, 2004
Reversed
Halbrooks, Judge

Hennepin County District Court
File Nos. C6-91-166, C9-91-159, C5-91-160

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Considered and decided by Halbrooks, Presiding Judge, Kalitowski, Judge, and Stoneburner, Judge.

SYLLABUS

Minn. Stat. § 501B.16(3), (4) (2002), which authorizes trustees to petition the district court for an order determining trust beneficiaries and interpret trust terms, does not authorize trustees to mount a collateral attack on a beneficiary's previously determined paternity without regard for the standing and timeliness requirements of applicable parentage laws.

OPINION

HALBROOKS, Judge

Respondent trustees brought a petition pursuant to Minn. Stat. § 501B.16 (2002), requesting the district court to determine beneficiaries and interpret terms of three trusts created by settlor JHM. Appellants, JHM's ex-wife PAM and the children born to her during her marriage to JHM (the younger children), challenge the district court's interpretation of trust language determining the beneficiaries of the trusts. Appellants argue that the district court erred by (1) interpreting the subject trusts as limiting beneficiaries to JHM's biological children and (2) concluding that relevant portions of the applicable parentage act did not conclusively establish the biological paternity of the younger children, thereby precluding any subsequent paternity challenge brought by respondent trustees. By notice of review, respondent beneficiaries challenge the district court's conclusion that it lacked personal jurisdiction over the younger children and could not therefore compel them to undergo genetic testing.

We conclude that Minn. Stat. § 501B.16 does not authorize trustees to challenge a previous determination of paternity made consistent with applicable parentage laws, and that the trustees here may not challenge the younger children's paternity in the context of their trust-clarification action. We further conclude that were such a challenge authorized by section 510B.16, it would nonetheless be unavailable to

respondent trustees here because of their failure to comply with the standing and timeliness requirements of applicable parentage laws.

FACTS

In 1974, JHM created an irrevocable trust (the 1974 Trust), the primary beneficiaries of which were his "issue," defined in the trust as "all persons who are descended from [JHM], either by legitimate birth to or legal adoption by him or any of his legitimately born or legally adopted descendants." The 1974 trust authorizes the trustees to make discretionary distributions of trust income and principal to named beneficiaries.

In 1980, JHM created two more irrevocable trusts (the 1980 Trusts), both of which designated JHM's children as beneficiaries, defined "child" as "issue of the first generation," and defined "issue" as

> all persons who are lineal descendants of [JHM] (including legally adopted lineal descendants and including lineal descendants in gestation, but not including step-children and foster-children of any generation) except (i) persons who become descendants by legal adoption after attaining the age of 18 years and their descendants and (ii) illegitimate descendants and their descendants.

Each trust provided that neither JHM nor any other person could modify, amend, or revoke the trust in any respect. Each trust is to be interpreted according to law of its situs, which for all three trusts has always been Minnesota. The combined value of the trusts is approximately $900,000,000.

JHM has been married three times. The six children born during his first two marriages are referred to in this matter as

"the older children." JHM married PAM, his third wife, in 1979; they were divorced in 1991. During the marriage, PAM gave birth to DHM (in 1983), CWM (in 1985), and ACM (in 1987), referred to in this matter as "the younger children." On each child's birth certificate, JHM is listed as the father. PAM and DHM, who has since reached majority, are represented in this matter; the district court is representing CWM and ACM pursuant to Minn. Stat. § 501B.19 (2002), which authorizes a court to represent interested minors in trust proceedings.

In 1986, JHM filed a petition to dissolve his marriage to PAM that challenged the paternity of DHM and CWM. ACM was not yet born. JHM subsequently filed a notice of voluntary dismissal of the action, stating that "with respect to the issues raised by him relative to the paternity of [DHM and CWM] ... [he] voluntarily dismisse[d the] petition *with prejudice*."

In 1989, the trustees of a fourth trust, created for the benefit of JHM and not at issue here, filed a petition in Minnesota district court seeking authorization to distribute trust assets to JHM's "children," a beneficiary class defined in the trust instrument as "all [of JHM's] legal issue and all adopted children." The petition, which was considered without objection from the older children, identified the younger children as JHM's and therefore eligible to receive trust distributions. In granting the petition, the district court specifically found that DHM, CWM, and ACM were JHM's children.

In 1991, JHM and PAM dissolved their marriage pursuant to a settlement agreement that specifically provided that the younger children are "children of the marriage" and stated that "no additional issue is contemplated." The agreement also provided:

> Husband further agrees that in the event of his death, with respect to any testamentary disposition of his assets held by him or in trust for his benefit, the [younger children] shall share equally and no differently than Husband's children from prior or future marriages. The Husband shall insure and require that in the event any new or future trusts are established by him, that the instruments will reflect the above agreement and that this obligation is specifically enforceable by a court of competent jurisdiction.

The agreement's article governing law and venue provides: "The parties agree that if any action or proceeding by either party dealing with the provisions of this Settlement Agreement and/or the [younger children] is commenced, Florida law will govern." The agreement was incorporated into the final judgment of dissolution of marriage entered in Florida in February 1991.

In 1997, respondent trustees, who are neither beneficiaries of the subject trusts nor members of JHM's family, received information that JHM is not the father of PAM's children. Reasoning that they had a duty to ascertain the proper trust beneficiaries, the trustees conducted an investigation and determined that there is a basis to reasonably conclude that PAM's children are not JHM's children.

In April 2000, two of the older children filed, and were granted, a petition in district court to determine JHM's capacity and to appoint them as plenary guardians over his person and property. The petition stated that the younger children are JHM's minor children.

In July 2000, respondent trustees brought a "Petition for Order to Determine Beneficiaries and for Other Relief" pursuant to Minn. Stat. § 501B.16(3), (4) (2002), which

authorizes trustees to request that the district court interpret the terms of a trust in order to identify beneficiaries and determine the nature and extent of their interests. The petition requested an order "[a]uthorizing and ordering such proceedings as are reasonably necessary to identify the proper beneficiaries of the Subject Trusts." In an affidavit accompanying the petition, the trustees asserted that "blood or saliva testing could be used to resolve conclusively the question of the parentage of [the younger children] for the purpose of this proceeding."

The trustees then filed a motion for partial summary judgment, requesting a declaration that any beneficiary of the subject trusts must be a biological descendent of JHM and that the younger children are not JHM's "issue" as the term is defined in the subject trusts. Respondents, the older children, filed a memorandum in support of the trustees' motion. Appellants brought a cross-motion to dismiss the trustees' petition, arguing that the trustees are precluded under the Florida Parentage Act and the Minnesota Parentage Act from challenging the younger children's paternity by (1) the 1991 judgment and decree of dissolution; (2) JHM's voluntary dismissal with prejudice of the 1986 paternity challenge; and (3) the 1989 Minnesota district court order finding the younger children to be JHM's for the purposes of a trust distribution. Appellants also moved for summary judgment on the grounds that the younger children are proper beneficiaries under the terms of the trusts, arguing that the term "issue" in the trusts does not require biological parentage. For the purposes of the cross-motions, the parties stipulated that the younger children "are not the biological children of [JHM]."

By an order issued in June 2002, the district court granted respondent trustees' motion, concluding that, under the terms of the trusts, beneficiaries must be JHM's biological or adopted children. The court authorized the respondent trustees "to conduct such proceedings and/or investigation as

reasonably necessary to determine if the [younger children] are the biological children of [JHM]." The court denied all of appellants' motions, reasoning that (1) as to standing, the respondent trustees were specifically authorized by Minn. Stat. § 501B.16 to ascertain beneficiaries; (2) the 1991 dissolution judgment was conclusive as to the younger children's legitimacy and JHM's paternity for the purposes of child support, but had no preclusive effect on respondent trustees' challenge to the younger children's paternity for the purposes of determining the trust beneficiaries.

In July 2002, respondent trustees filed a Motion for Order Approving Process for Determination of Beneficiary Status in which they requested the district court to declare that the younger children are not the biological children of JHM unless they submit to genetic testing under agreed-upon, court-directed circumstances. Appellants filed motions (1) opposing the genetic-testing proposal; (2) requesting reconsideration of the June 2002 order; and (3) to compel discovery related to respondent trustees' factual inquiry into the younger children's paternity. Appellants' request for discovery was premised on the argument that the younger children's parentage should be determined by "traditional means before any genetic testing." Appellants also argued that respondent trustees' July 2000 petition to determine beneficiaries was barred by the doctrine of laches because the trustees knew as early as December 1997 of allegations questioning the younger children's paternity.

In February 2003, the district court issued an order granting respondent trustees' motion and denying all of appellants' motions. The court subsequently issued a judgment declaring that the younger children are not the biological children of JHM for the purposes of the subject trusts unless they submit to genetic testing within either one year of the order or within one year of attaining majority, whichever is later. The court reasoned that because this is an

in rem proceeding, it lacks personal jurisdiction over the younger children and cannot order them to undergo genetic testing. This appeal follows.

ISSUE

Did Minn. Stat. § 501B.16 (2002) authorize the trustees to seek a determination that JHM is not the younger children's biological father?

ANALYSIS

Appellants argue that the trustees and respondent beneficiaries are precluded from requesting a declaration that the younger children are not JHM's biological issue because such an authorization is not authorized by Minn. Stat. § 501B.16 (2002) where the children's paternity has been previously established pursuant to both Florida and Minnesota parentage laws. Appellants contend that the trustees' challenge to the younger children's parentage action fails to meet those acts' standing and timeliness requirements and is barred by res judicata as an attempt to relitigate a previously adjudicated issue. Statutory construction is a question of law, which we review de novo. *In re Estate of Zeno*, 672 N.W.2d 574, 576 (Minn. App. 2003).

Whether Minn. Stat. § 501B.16 authorizes trustees to challenge a beneficiary's parentage, as previously determined by applicable parentage laws, is an issue of first impression in Minnesota. Respondent trustees and respondent beneficiaries first argue that the trustees' action is not governed by either the Florida or the Minnesota Parentage Act because it does not seek to challenge the younger children's paternity as established by those statutes, but is merely seeking to clarify and enforce the terms of the subject trusts pursuant Minn. Stat. § 501B.16. We disagree with respondents' characterization of the trustees' action.

As the filings in this matter make clear, the challenge to the younger children's paternity is the kernel of the trustees' petition. Both respondents requested - and obtained - a declaration from the district court that the younger children are not JHM's biological issue and cannot therefore be trust beneficiaries; without such a declaration, the trustees' petition for clarification would contain no practical request for relief *Cf. In re Estate of Lamey v. Lamey*, 689 N.E.2d 1265, 1269 (Ind. Ct. App. 1997) (holding that where an action to identify heirs will necessarily require an action to determine paternity, "there is no practical difference between these two types of actions"). We further observe that the district court's June 2002 order specifically describes the trustees' action, and allows it to go forward, as "a challenge by the trustees of [JHM's] paternity of the younger children."

We agree with respondents' contention that the trustees have standing to request trust clarification pursuant to Minn. Stat. § 501B.16. But section 501B.16 does not thereby confer standing upon the trustees to challenge the younger childrens' paternity by bringing a collateral attack of a preexisting adjudication of parentage made consistent with applicable parentage laws.

We next address whether the applicable parentage law is that of Florida, where the younger children were born and reside, or of Minnesota, the situs of the subject trusts. Although the trusts are clear that Minnesota law must control their interpretation, the status of a person who may be a beneficiary of an instrument created under Minnesota law is determined by the laws of that person's domicile. *See In re Patrick's Will*, 259 Minn. 193, 196, 106 N.W.2d 888, 890 (1960) (stating that "[w]ith respect to a claimant's right to take from an estate being probated in this state, the status of the claimant is determined by the laws of his domicile, but his rights in the estate are determined by the laws of this state"); Restatement (Second) of Conflicts of Laws § 287 (1971)

(stating that generally, the traditional rule is that determinations of paternity status are governed by the local law under which the status was created).

"Before applying the choice-of-law analysis, this court must first determine whether the choice of one law will be outcome determinative, i.e., whether there is an actual conflict." *Kearns v. Am. Family Ins. Group*, 486 N.W.2d 796, 798 (Minn. App. 1992) (quotation omitted), *review denied* (Minn. Aug. 4, 1992). We therefore consider whether the application of Florida or Minnesota law will lead to different results in this case.

In Florida, courts maintain "the presumption that a child born in wedlock is the blood issue of the partners of such marriage." *Knauer v. Barnett*, 360 So. 2d 399, 403 (Fla. 1978). Parentage proceedings in Florida are governed by the Determination of Parentage Act, Fla. Stat. ch. 742 (2002). That act provides:

> Any woman who is pregnant or has a child, any man who has reason to believe that he is the father of a child, or any child may bring proceedings in the circuit court, in chancery, to determine the paternity of the child when paternity has not been established by law or otherwise.

Fla. Stat. § 742.011. Chapter 742 "is the exclusive remedy for establishing paternity in Florida." *Achumba v. Neustein*, 793 So. 2d 1013, 1016 (Fla. Dist. Ct. App. 2001).

Paternity is established by law "when there has been an adjudication of paternity or by the filing of affidavits or stipulation acknowledging paternity." *G.F.C. v. S. G.*, 686 So. 2d 1382, 1385 (Fla. Dist. Ct. App. 1997). The Florida Supreme Court has held that "a final judgment of dissolution of marriage which establishes a child support obligation for a

former husband is a final determination of paternity." *D.F. v. Dep 't of Revenue ex rel. L.F.*, 823 So. 2d 97, 100 (Fla. 2002). Although subsequent challenges to legally established paternity may be brought pursuant to Fl. R. Civ. P. 1.540 for mistake, newly discovered evidence, or fraud, a motion for relief from a final judgment on any of those grounds must be brought "not more than 1 year after the judgment, decree, order, or proceeding was entered or taken." *Id.* (quoting Fl. R. Civ. P. 1.540(b)(5)); *Florida Dep 't of Revenue ex rel. Sparks v. Edden*, 761 So. 2d 436, 437 n.2 (Fla. Dist. Ct. App. 2000) (stating that "[a]bsent a showing of fraud upon the court a trial court is without jurisdiction to permit a challenge to a judgment of paternity more than one year after its rendition").

Here, the 1991 dissolution decree, as entered into judgment in Florida, stated that JHM was the younger children's father and established JHM's child-support obligations. We observe that JHM had previously stipulated to paternity of the two elder younger children when he voluntarily dismissed, with prejudice, his 1986 paternity challenge. We conclude that these acts established JHM's paternity of the younger children in Florida as a matter of law. We further observe that even had the younger children's paternity not been established under Florida law, only "[a] woman who is pregnant or has a child, [a] man who has reason to believe that he is the father of a child, or [a] child" has standing to challenge paternity. Fla. Stat. § 742.011. The trustees therefore lack standing to challenge the younger children's paternity under Florida law. Further, even if they had standing, the trustees' challenge is barred as untimely under Florida law.

In its order permitting the trustees to challenge JHM's paternity of the younger children, the district court correctly cited *Daniel v. Daniel*, 695 So. 2d 1253, 1254 (Fla. 1997), for the proposition that in Florida, "paternity and legitimacy are related, but nevertheless separate and distinct concepts." In

Daniel, the court held that "legitimacy" refers to the status of a child born during a valid marriage, while "paternity" refers to the status of being the natural, or biological, father of a child. *Id.* at 1254-55. Citing *Daniel*, the district court concluded that Florida law preserves the presumption of legitimacy for children born during a marriage but "clearly permits a challenge to a determination of paternity, subject to various limitations." We find the court's reliance on *Daniel* misplaced in that the parties in *Daniel* stipulated in the marriage dissolution proceeding that the husband was not the biological father of the child born to his wife during the marriage. *See id.* at 1254. In the case before us, paternity was stipulated in an adjudicated dissolution decree. *Daniel* held that a child's legitimacy is unaffected where a former husband raises the issue of paternity during a dissolution proceeding. *Id.* at 1255. The Florida Supreme Court has since held that *Daniel* does not affect the principles that "a final judgment of dissolution of marriage which establishes a child support obligation for a former husband is a final determination of paternity" and that any subsequent challenge to paternity must be brought under the provisions of the rules of civil procedure governing relief from judgment, decrees, or orders. *D.F.*, 823 So. 2d at 100.

Florida courts have consistently "applied the principle that a divorce decree which establishes the paternity of a child is a final determination of paternity." *Anderson v. Anderson*, 746 So. 2d 525, 526 (Fla. Dist. Ct. App. 1999) (quotation omitted). The trustees cite no authority permitting them to use the trust-clarification petition to circumvent the standing and timeliness requirements of the Florida Parentage Act or otherwise reopen the dissolution judgment establishing JHM's paternity of the younger children. *See Knauer*, 360 So. 2d at 403 (holding that where father's acknowledgement of paternity rendered child legitimate for all purposes, factual proof of paternity by father was unnecessary and irrelevant in declaratory judgment proceeding to determine whether son

was "blood issue" of father within meaning of trust instrument). We conclude that under the Florida Parentage Act, when a child is born into a marriage, the law does not expressly authorize a third party, who is not asserting paternity in the child, to petition the court for a mandatory determination of a child's paternity under the guise of a petition to clarify a trust instrument.

"[A]s a general matter, foreign dissolution decrees are entitled to full faith and credit from the Minnesota courts." *Mahoney v. Mahoney*, 433 N.W.2d 115, 119 (Minn. App. 1988), *review denied* (Minn. Feb. 10, 1989). We therefore conclude that the 1991 Florida dissolution decree and JHM's 1986 voluntary dismissal with prejudice of the 1986 paternity action conclusively established the younger children's status as his biological issue under Florida law. That status is entitled to full faith and credit in Minnesota courts, and the trustees are therefore barred by the Florida Parentage Act's standing and timeliness requirements from challenging the younger children's paternity.

We next address the younger children's parentage status under Minnesota law. The Minnesota Parentage Act "provides the exclusive bases for standing to bring an action to determine paternity." *Witso v. Overby*, 627 N.W.2d 63, 65-66 (Minn. 2001). "Whether the trial court properly interpreted the parentage act is a question of law, which we review without deference to the trial court's conclusions." *In re Welfare of C.M.G.*, 516 N.W.2d 555, 558 (Minn. App. 1994). "Whether and when a person may bring a paternity action depends on which presumptions of paternity, if any, apply." *Witso*, 627 N.W.2d at 66 (citing Minn. Stat. § 257.57 (2000)). Under the Minnesota Parentage Act, a man is presumed to be the biological father of a child born to his wife. Minn. Stat. § 257.55, subd. 1(a) (2002). That presumption may be rebutted by clear and convincing evidence, *id.*, subd. 2 (2002), but only by the child, the mother, or the presumptive father,

Minn. Stat. § 257.57, subd. 1 (2002), and "in no event later than three years after the child's birth," at which point the presumption becomes irrebuttable. Id., subd. 1(b). Adjudications of parentage under the parentage act are "determinative for all purposes." Minn. Stat. § 257.66, subd. 1 (2002).

The parentage act's standing requirements contain no exceptions. *See Markert v. Behm*, 394 N.W.2d 239, 242 (Minn. App. 1986) (observing that the act confers standing "only upon" those persons named). The act's timeliness requirements are similarly inflexible: "The obvious intent of the three-year statute of limitations is to make the presumption of legitimacy conclusive once a child reaches three years of age." *Pierce v. Pierce*, 374 N.W.2d 450, 452 (Minn. App. 1985), *review denied* (Minn. Nov. 4, 1985); *see also DeGrande v. Demby*, 529 N.W.2d 340, 343-44 (Minn. App. 1995) (holding that "[e]ven in the face of scientific evidence excluding [a party's] biological paternity, the three-year statute of limitations contained in the Minnesota Parentage Act is an absolute bar to an action to declare the father-child relationship nonexistent"), *review granted* (Minn. May 16, 1995), *appeal dismissed* (Minn. July 27, 1995); *Clay v. Clay*, 397 N.W.2d 571, 575 (Minn. App. 1986) (holding that even where the former husband "knew or should have known at the time of the dissolution" that the child born of the marriage was not his biological issue, the district court properly refused to vacate the portion of the marriage dissolution decree naming appellant father of the child in question, despite blood tests indicating he could not be the child's father), *review denied* (Minn. Feb. 17, 1987).

In support of its conclusion that "[t]he presumption of legitimacy is not a per se bar to a challenge by the trustees of [JHM's] paternity of the younger children," the district court relied on our decision in *In re Estate of Palmer*, 647 N.W.2d 13 (Minn. App. 2002), *aff'd*, 658 N.W.2d 197 (Minn. 2003),

for the proposition that "[c]lear and convincing evidence of the parentage may be used [to challenge paternity] regardless of the limitations of the parentage act." We find the district court's reliance upon *Palmer* misplaced in that *Palmer* concerned the interpretation of a provision of the Minnesota Probate Code stating that "the parent and child relationship *may* be established under the Parentage Act." *Id.* at 15 (quoting Minn. Stat. § 524.2-114(2) (2000)). We concluded that because "may is permissive . . . [t]he probate court's jurisdiction over the determination of heirs and successors is not limited by the Parentage Act." *Id.* Minn. Stat. § 501B.16, under which the trustees brought their petition for trust clarification, contains no analogous permissive language authorizing the district court to look beyond the parentage act's justiciability requirements to entertain a paternity challenge.

We conclude that because JHM's biological paternity of the younger children was previously adjudicated under Minnesota law and because the trustees did not meet the standing and timeliness requirements of the Minnesota Parentage Act, their attempt to challenge the younger children's established paternity was not authorized by either Minnesota or Florida law. Because we conclude that no actual conflict is created by the choice of whether Florida or Minnesota law applies to the trustees' challenge to the younger children's paternity, no choice-of-law analysis is necessary.

In Minnesota, the "parent and child relationship" is "the legal relationship existing between a child and the child's biological or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations." Minn. Stat. § 257.52 (2002). "The guiding principle [of the parentage act] is that the best interests of the child are paramount." *Wilson v. Speer*, 499 N.W.2d 850, 852 (Minn. App. 1993), *review granted* (Minn. July 19, 1993), *appeal*

dismissed (Minn. Aug. 16, 1993). In *Michael H. v. Gerald D.*, 491 U.S. 110, 119-120, 109 S. Ct. 2333, 2340 (1989), the court stated that a determination of parentage made pursuant to a state parentage act reflects

> a substantive rule of law based upon a determination by the Legislature as a matter of overriding social policy, that given a certain relationship between the husband and wife, the husband is to be held responsible for the child, and that the integrity of the family unit should not be impugned.

(Quotation omitted.) Given the clear statements of policy expressed by the parentage act, we cannot conclude that the legislative intent embodied in that act would be furthered were we to permit third-party challenges to prior adjudications of paternity.

Other courts have reached the same conclusion after applying state parentage acts to facts similar to those before us. In *In re Trust Created by Agreement Dated Dec. 20, 1961*, 765 A.2d 746 (N.J. 2001), certain trust beneficiaries filed a challenge to a beneficiary's parentage and thus her status as a beneficiary of the trust. *Id.* at 751. The court held that the New Jersey Parentage Act, the applicable terms of which are substantively similar to those before us, foreclosed the beneficiaries' third-party attack on a beneficiary's parentage adjudicated on the basis of an acknowledgement of paternity in a divorce action; the beneficiaries thus could not collaterally attack the parentage in an attempt to exclude the beneficiary. *Id.* at 755. The court specifically found that the term "issue," the same term used in the subject trusts before us, includes children whose paternity has been established under the state parentage act. *Id.* at 757.

Both the Minnesota and Florida parentage acts provide limited opportunity for certain specified individuals to

challenge a determination of paternity previously adjudicated in a divorce proceeding. Although Minn. Stat. § 501B.16 authorizes respondent trustees to request a clarification of the trust language, that law does not authorize respondents to circumvent the standing and timeliness requirements of the applicable parentage acts in order to mount a collateral attack on the younger children's paternity. Because we conclude that Minn. Stat. § 501B.16 does not authorize the trustees' action, we do not address the alternative grounds for dismissal or the other issues raised by the parties.

DECISION

Minn. Stat. § 501B.16 (2002) does not authorize trustees to collaterally attack a beneficiary's previously adjudicated parentage where no applicable parentage law authorizes third parties to seek a declaration disestablishing parentage under the guise of a trust-clarification action. The district court therefore erred in permitting respondent trustees to challenge the younger children's paternity and in declaring that the younger children are not the biological issue of JHM. We therefore reverse the district court's decision and order that summary judgment be entered in favor of appellants.

Reversed.

STATE OF MINNESOTA
IN SUPREME COURT
A03-454

In the Matter of the Trusteeship of the Trust Created Under Trust Agreement dated December 31, 1974; and In the Matter of the Trusteeship of the Trust Created Under Trust Agreement Dated December 30, 1980; and In the Matter of the Trust Created Under Trust Agreement Dated December 30, 1980.

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petitions of [AMP], [DM], [JM], [DM], [KMR] and [SMK] for further review be, and the same are, denied.

Dated: April 20, 2004

BY THE COURT:

s/
Alan C. Page
Associate Justice

BLATZ, C.J., took no part in the consideration or decision of this case.

STATE OF MINNESOTA
In the Matter of the Trusteeship of the Trust Created Under Trust Agreement dated December 31, 1974; and In the Matter of the Trusteeship of the Trust Created Under Trust Agreement Dated December 30, 1980; and In the Matter of the Trust Created Under Trust Agreement Dated December 30, 1980

JUDGMENT
Court of Appeals

Appellate Court # A03-454

Trial Court # C6-91-166/ C9-91-159 / C5-91-160

Pursuant to a decision of Court of Appeals duly made and entered, it is determined and adjudged that the decision of the Hennepin County District Court, Probate/Mental Health Division herein appealed from be and the same hereby is reversed and judgment is entered accordingly. A certified copy of the entry of judgment and the court's decision is herewith transmitted and made part of the remittitur.

Dated and signed:
May 3, 2004

FOR THE COURT

Attest: Frederick K. Grittner
Clerk of the Appellate Courts

By: s/_____
Assistant Clerk

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
PROBATE-MENTAL HEALTH DIVISION

In the Matter of the Trusteeship of
the Trust known as the "[JHM 1974 Trust]"
Created Under Trust Agreement dated
December 31, 1974

In the Matter of the Trusteeship of
the Trust known as the "[1980 JHM Family
Trust]" Created Under Trust Agreement
Dated December 30, 1980

In the Matter of the Trust known as the
"[1980 SMC Trust]" Created Under Trust
Agreement Dated December 30, 1980

ORDER DETERMING TRUST BENEFICIARIES AND DENYING OTHER RELIEF

File No. C6-91-166
C9-91-159
C9-91-160

This matter came before the court on October 17, 2002, on: (a) the Motion filed July 3, 2002 of Robert J. Struyk and Phillip H. Martin, co-trustees of all three trusts (hereinafter "trustees"), for an Order regarding the process to determine the biological descent of [DHM], [CWM] and [ACM] (hereinafter collectively referred to as "the younger children"); (b) the Motion filed July 31, 2002 of [PAM] and [DHM] to Compel Discovery; (c) the Request filed August 8,

2002 of [PAM] and [DHM] for a reconsideration of the court's order of June 21, 2002; and (d) the Motion filed October 16, 2002 of [PAM] and [DHM] to Strike Memorandum of Trustees responding to request for re-consideration and to the opposition to the process to determine the biological descent.

Following the hearing, counsel for the parties agreed to submit written memoranda, which were timely submitted on November 18, 2002.

Trustees appeared by their attorneys, Richard B. Solum and Joseph K. Thiegs.

[PAM] and [DHM] appeared by their attorneys, Frederick W. Morris and David R. Crosby.

[JM], [DDM], [KMR], [AMP], [DCM], and [SMK] (hereinafter collectively, "the older children") appeared by their attorney, Phillip A. Cole.

The matter was referred for hearing to Bruce Kruger, District Court Referee, who now reports to the Court making the following:

FINDINGS OF FACT

1. The background of the establishment of the instant trusts and a summary of their pertinent provisions and the family history of [JHM] ([JHM]) are set forth in this court's order of June 21, 2002, and that information is herein incorporated by reference. That order determined that the beneficiaries of the three trusts are the biological descendants of [JHM] or persons descended from [JHM] through legal adoption, subject to some restrictions concerning the adoptions. Adoption is not involved in these proceedings. The instant hearing is a continuation of the earlier proceedings, and the court retains its jurisdiction as a

proceeding *in rem*. Likewise, the court continues to represent [CWM] and [ACM], the two "younger children" who have not attained majority. Minn. Stat. § 501B.19 (2000).

2. [PAM] and [DHM] appealed this court's Order of June 21, 2002 to the Minnesota Court of Appeals, but they also moved the Court of Appeals for a determination that the June 21, 2002 order was not final and appealable. At the time of the instant hearing, the appeal was pending, and the Court of Appeals had not ruled on the motion concerning appealability. This court expressed doubt that it had jurisdiction to hear the matters raised in the four matters described above. Counsel and the court agreed to proceed with the hearing, and agreed the court would withhold any ruling until the Court of Appeals determined the appeal. On October 22, 2002, the Court of Appeals ruled that the June 21, 2002 Order was not final, and dismissed the appeal. No. C2-02-1725 (Minn. Ct. App., October 22, 2002). Counsel for the parties subsequently agreed to submit additional written submissions on the four matters pending before this court by Friday, November 15, 2002, and the court actually received the last of these on Monday, November 18, 2002. The submissions were considered timely.

3. The request for reconsideration is based largely upon this court's citation of Est. of Palmer v. Palmer, No C7-02-182 (Minn. Ct. App., June 18, 2002). Initially, there is a suggestion that counsel for the trustees had made this court aware of that decision. It is correct that a copy of the decision was mailed to the court by counsel for the trustees, but this court became aware of the decision when it was announced and prior to receipt of the mailing. This court had, for practical purposes, written the June 21, 2002 order before it received the mailing from trustees' counsel. Secondly, and contrary to the assertion in the request, this court did not rely entirely or largely upon *Palmer*. In fact, this court did not determine whether Florida or Minnesota law would govern.

It concluded that inquiry into parentage in the instant facts was not barred by either Florida or Minnesota law (citing *Palmer* for the latter). Given the residency of "the younger children," it is likely that Florida law would control, although that determination has not been made. Thirdly, this court is now aware that the Minnesota Supreme Court has accepted review of *Palmer*, and that oral arguments have already occurred.

4. The Motion to Strike is now moot. This court will not be re-considering its June 21, 2002 order. In addition, pursuant to the agreement of counsel and this court, all parties were given additional time to submit post hearing written memoranda, and did so. The court will consider these memoranda, in addition to those submitted prior to the instant hearing. All parties have had the opportunity to be heard and to respond.

5. The motion to compel discovery is specifically based upon [PAM] and [DHM]'s claimed defense of laches. In summary, that defense alleges that the trustees could have brought the petitions earlier, but delayed bringing them until after the time that [JHM] was placed under guardianship and determined to be incompetent. It is asserted that although the trustees did not seek the guardianship, they worked in concert with two other children of [JHM] who initiated the proceedings. The effect of the delay was to prevent a possible adoption of the younger children by [JHM]. In pursuit of such defense, counsel seeks copies of reports the trustees obtained in the course of their investigation, and seek depositions of several of the past and present trustees. The trustees have asserted the reports are attorney work product compiled in preparation for these proceedings, and are not discoverable.

6. The trustees have also argued that the June 21, 2002 order foreclosed the defense of laches, because it denied

the motion to dismiss these proceedings, determined that "issue" meant biological descendants, and directed further proceedings to determine biological descent. The trustees further argue that laches is not a defense to these proceedings, because no monetary relief is being sought from the younger children, there is no time limitation for the trustees to seek instructions from the court, the trustees did not work in concert with the guardianship proceedings, and the trustees did not in fact delay bringing the proceedings (rather they conducted what they believed to be an appropriate investigation before filing the petitions). The younger children have not refuted the trustee's statements of the timing of their actions or the lack of cooperation with the guardianship proceedings.

7. The trustees' petition concerning the process for determining the biological descent is a request that this court order that the younger children will be conclusively determined not to be biological descendants of [JHM], unless they submit to DNA testing under agreed upon or court-directed circumstances. Their submissions to this court, although not received as evidence, strongly suggest that the younger children are not biological descendants of [JHM]. [PAM] and [DHM] have never asserted that the younger children are such descendants and have never denied the trustees' allegations. The trustees argue that engaging in discovery, whether limited to the defense of laches or directed to the overall issue of biological descent, is unseemly, contentious and invasive. They note that DNA testing, using a saliva sample taken by a quick swab of the inside of the cheek of the person, is really far less invasive and scientifically certain and accurate. They have not, however, asked the court to order such testing. Rather, they ask the court to avoid the litigation and direct that a determination of biological descent will be made in the absence of such testing, or will be made on the basis of the results of such testing.

Upon the foregoing Findings of Fact, the Referee makes the following

CONCLUSIONS OF LAW

1. As noted in the June 21, 2002 order, the trustees have a duty to ascertain the beneficiaries of the trust, and to administer the trusts and distribute trust income and principal in accordance with the trusts' provisions. In these trusts, determination of beneficiaries means a determination of biological descent.

2. The proceedings before the court have been brought pursuant to Minn. Stat. 501B.16 (2000). The court has jurisdiction of the trust as a proceeding *in rem*. Minn. Stat. § 501B.24 (2000). It does not have personal jurisdiction over the trust beneficiaries.

3. The request for a re-consideration should be denied. Ultimately, this court's orders will all be appealed, and no useful purpose will be served by additional briefings to this court on the effect of *Palmer*, nor by a general reconsideration of the June 21, 2002 order.

4. The motion to strike should be denied as largely moot. All parties have had the opportunity to address all of the issues, and have done so.

5. Although this court did not specifically rule on the defense of laches in its June 21, 2002 order, the defense is not applicable to these proceedings. The doctrine does not apply where there is no claim for monetary gain. Moreover, beyond the assertion that [JHM] *might* have adopted the younger children after the these proceedings were instituted, there is no indication that the trustees unduly delayed their petitions, that [JHM] had the capacity to adopt in the period before the start of these proceedings, or that he would have adopted if he

had the capacity. There is no indication that the factual basis for it exists. Discovery related to this alleged defense should not be permitted.

6. Although the attempt to discover copies of the investigator's report(s) is primarily related to the laches defense, it also relates to the broader issue of the biological descent. In either event, such report(s) are attorneys' work product and are not subject to discovery.

7. The disallowance of further discovery, whether on the defense of laches or on biological descent, is a legal conclusion on those issues. It also reflects the court's representation of two of the minor children. The court is concerned that such discovery is far more harmful to them than the DNA testing. They are aware, or obviously soon will become aware, of the allegations that [JHM] is not their biological father. Having full-fledged discovery, including depositions of not only their mother, but also numerous other persons, on the circumstances surrounding their conception will not protect their privacy, dignity and well being. It is not in their best interests.

8. The trustees' suggested procedure for determination of biological descent is an instruction pursuant to Minn. Stat. § 501B.16. Although it contains a request to make a determination of biological descent, it does not request an order for DNA testing. It does request the court to determine descent on the basis of such testing, if the beneficiaries undergo it, or to determine descent on the failure to undergo testing. This proceeding is an *in rem* proceeding, and this court has no personal jurisdiction of the beneficiaries and no authority to order them to submit to testing. The Rules of Civil Procedure, and specifically Rule 35, do not apply to this situation.

9. Although the court represents the two younger children who have not attained majority, it has no jurisdiction of or legal authority over them. Moreover, they lack the capacity to act on their own behalf. A conclusion or result that follows from their failure to take an action during their minority, such as submit to DNA testing, is of doubtful validity. Any such order has to extend for some period after each has attained majority, not unlike the tolling of various statutes of limitation during minority.

10. The June 21, 2002 order authorized the trustees to conduct such proceedings and/or investigation as reasonably necessary to determine if the younger children are the biological children of [JHM]. It directed that such proceedings and investigation be conducted in such a manner as to preserve the dignity, privacy and well being of the three children in question as much as is reasonably possible. As noted above, the trustees' allegations concerning the biological descent have not been denied. Pre-trial discovery and litigation on the issue is unseemly, invasive and obviously expensive. A better process is this court's order directing that the court will determine that the younger children are not the biological descendants, unless they submit to DNA testing within a certain period of their attaining majority. If they do submit to such testing, the determination will be made on the basis of the results of such testing. Such an approach may actually require three different determinations and will necessarily involve a delay in the final determination until some period after the youngest child attains majority.

11. In Minnesota, the general rule is that minority suspends the running of statutes of limitations, and such statutes are generally not extended for more than one year after the attainment of majority. Minn. Stat. § 541.15 (2000). Using this as a guide, this court's order limiting the time for

the DNA testing should extend the time until one year after a child attains majority.

The Court, having reviewed the Findings and Conclusions of the Referee and all of the files and records herein and being fully advised in the premises, now

ORDERS

1. The beneficiaries of the instant three trusts are persons who are biological descendants of [JHM] or descendants of [JHM] through legal adoption, subject to the adoption restrictions described in the [1980 JHM Family Trust] (C9-91-159) and the [1980 SMC Trust] (C5-91-160).

2. [DHM], [CWM] and [ACM] are conclusively determined not to be biological descendants of [JHM] or descendants of [JHM] through legal adoption, for purposes of the three instant trusts, unless they submit to DNA testing described herein and the results of such testing establish that they are such biological descendants. Such testing for each such person shall occur within one year of this order or within one year following such person's eighteenth birthday, whichever period is later. The testing for all three persons shall be conducted by one reputable professional testing company regularly engaged in such testing. The testing company shall be selected by the trustees and shall regularly maintain a facility for the purpose of collecting DNA samples located within a reasonable distance of the [PAM]'s present Florida residence. The trustees shall pay the cost of such testing as an expense of trust administration. The company shall agree in writing to disclose the results of such testing only to the trustees and to the persons tested and/or their legal representatives and the trustees shall disclose such results only as reasonably necessary to the administration of the three trusts.

3. The Motion of the trustees to determine the process for determining the trust beneficiaries is granted, as set forth herein.

4. The Motions, Petitions, and Requests of [PAM] and [DHM] to Compel Discovery, to Reconsider the June 21, 2002 order, and to strike some the trustees' written submissions are all denied.

5. The original copy of this Order shall be filed in court file C6-91-166, and photocopies of this Order shall be filed in court files C9-91-159 and C5-91-160. The filing of the photocopies shall have the same force and effect as if a duplicate original copy of this order been filed in those court files.

6. Let judgment be entered accordingly.

Findings and Conclusions
Submitted and Order
Recommended by:

s/ 2/12/03
Bruce Kruger Date
District Court Referee

s/ 2/12/03
Patricia L. Belois Date
Judge of District Court

[PROBATE COURT SEAL]

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
PROBATE-MENTAL HEALTH DIVISION

In the Matter of the Trusteeship of
the Trust known as the "[JHM 1974 Trust]"
Created Under Trust Agreement dated
December 31, 1974

In the Matter of the Trusteeship of
the Trust known as the "[1980 JHM Family
Trust]" Created Under Trust Agreement
Dated December 30, 1980

In the Matter of the Trust known as the
"[1980 SMC Trust]" Created Under Trust
Agreement Dated December 30, 1980

ORDER INTERPRETING TRUST, GRANTING PARTIAL SUMMARY JUDGMENT AND GRANTING PETITION

File No. C6-91-166
C9-91-159
C5-91-160

This matter came before the court on March 6, 2002, after several continuances, on: (a) the Petition of Robert J. Struyk and Phillip H. Martin, co-trustees of all three trusts (hereinafter "trustees"), for an Order authorizing proceedings

necessary to determine if certain persons are beneficiaries of the trusts, (b) the Motion of trustees for an order determining that a beneficiary of the trusts must be a biological descendant of [JHM] (hereinafter "[JHM]") or a descendant of him through legal adoption, and (c) the Motion of [PAM] and [DHM] to dismiss trustees' Petition and/or for Summary Judgment in their favor on the issues raised by trustees.

Following the hearing, counsel for the parties submitted written memoranda, which were timely submitted on March 20, 2002. Counsel submitted further written materials to the court on June 11 and 12, 2002, and the court has accepted such submissions as part of these matters.

Trustees appeared by their attorneys, Richard B. Solum, William J. Berens and Joseph K. Thiegs.

[PAM] and [DHM] appeared by their attorneys, Morris M Sherman, Frederick W. Morris, David R. Crosby, Jane F. Godfrey, Lowell V. Stortz and Stephen R. Litman.

[JM], [DDM], [KMR], [AMP], [DCM], and [SMK] (hereinafter collectively, "the older children") appeared by their attorney, Phillip A. Cole.

The matter was referred for hearing to Bruce Kruger, District Court Referee, who now reports to the Court making the following:

FINDINGS OF FACT

1. [JHM] and/or other members of the [M] family established the instant trusts for the benefit of [JHM]'s family. The trusts are irrevocable, and neither [JHM] nor any other person has any authority to amend or revoke the trusts. The trusts are and always have been administered in Minnesota. Prior court proceedings concerning these trusts

occurred in Minnesota in 1991. Notice of the original Trustees' Petition dated July 17, 2000 was given by publication and mail pursuant to this court's order for hearing dated July 27, 2000. This court has jurisdiction of the trusts. Notices of trustees' Motion and the Motion of [PAM] and [DHM] were properly given.

2. [JHM] has been married three times. His first spouse was [SVM], and they had three children, whose names are [JM], [DDM] and [KMR]. His second spouse was [SGM], and they had three children, who names are [AMP], [DCM] and [SMK]. All six of these children have attained majority, are represented by the same attorney, and, as noted earlier, are collectively referred to as "the older children." No question has been raised concerning their parentage or status as beneficiaries of the three instant trusts.

3. JHM]'s third spouse was [PAM], and three children were born to her during their marriage. Their names are [DHM], [CWM] and [ACM]. These children are hereinafter collectively referred to as "the younger children." [DHM] has attained majority, and he and [PAM] are represented by counsel and are parties herein. [CWM] and [ACM] are minors, and are also parties herein. The court has undertaken to represent them pursuant to Minn. Stat. § 501B.19 (2000).

4. The instant trusts were all established before the birth of any of the younger children; the eldest of the younger children was born in 1983. Settlement Agreement dated January 24, 1991, Affidavit of [WHL], attachment C. There is no evidence (nor could there be) that [JHM] or the other settlors of the trusts had any specific intention with respect to the younger children. The examination is limited to the language of the trust instruments.

5. Trustees allege they have received information that the younger children are not the biological children of [JHM], although they were born during the marriage of [JHM] and [PAM]. They seek authority to conduct further investigation and/or legal proceedings to determine if the younger children are the biological children of [JHM]. The trustees' Motion for partial summary judgment is for a ruling that a person must be a biological descendant of [JHM] or a descendant of [JHM] through legal adoption in order to be deemed a beneficiary of the instant trusts. The older children join in the Petition of trustees, and in trustees' Motion for partial summary judgment. [PAM] and the younger children oppose trustees' Petition and Motion, and have moved for a dismissal of trustees' Petition, for denial of the summary judgment Motion, and for an Order that trustees either cannot raise the issue of the paternity (lack standing) or that the issue have previously been conclusively determined for purposes of the instant trusts.

6. The 1974 trust (C6-91-166) provides that "issue" of [JHM] are beneficiaries, and defines issue as "...all persons who are descended from ...([JHM])..., either by legitimate birth to or legal adoption by him or any of his legitimately born or legally adopted descendants." Paragraph 1.05(1).

7. The 1980 trusts (C9-91-159 and C5-91-160) provide that issue of [JHM] are beneficiaries, and defines issue as "...all persons who are lineal descendants of the person whose issue are referred to (including legally adopted lineal descendants and including lineal descendants in gestation, but not including step-children and foster-children of any generation) except (i) persons who become descendants by legal adoption after attaining the age of 18 years and their descendants and (ii) illegitimate descendants and their descendants...." Paragraph 3.01.

8. At least for the purposes of these motions, the parties have stipulated that the younger children are not the biological children of [JHM]. The parties disagree as to whether such stipulation may be used for other purposes, and the court has not been asked to rule on the total effect of the stipulation.

9. In the course of the first marriage dissolution proceedings (1986) between [PAM] and [JHM] (these occurred in Florida, the residence of [PAM], [JHM] and the younger children), [JHM] raised the issue of whether the two older younger children were his biological children. Affidavit of [WHL] dated February 4, 2002. Those proceedings were apparently dismissed, but the marriage was eventually dissolved by a second Florida proceeding in 1991. Ibid. In the dissolution judgment dated February 5, 1991, the younger children were identified as ...the parties' minor children...," (Id. at attachment C), and the Settlement Agreement dated January 24, 1991 incorporated into the Judgment included extensive provisions concerning the parenting, the residence, and [JHM]'s financial support of the younger children. Ibid. There was no evidence that the dissolution judgment has been amended or vacated, and there was no evidence that [JHM] has failed to perform his financial obligations to the younger children under the dissolution judgment.

Upon the foregoing Findings of Fact, the Referee makes the following

CONCLUSIONS OF LAW

1. As a part of their duties as trustees, the trustees of the instant trusts have a duty to ascertain the beneficiaries of the trust, and to administer the trusts and distribute trust income and principal in accordance with the trusts' provisions.

2. The beneficiaries of all three trusts are the "issue" of [JHM]. For purposes of the instant matter in which there are no adoptions and only the alleged children of [JHM] are being considered, the definitions of issue as persons "legitimately born to" [JHM] (the 1974 trust) or "lineal descendants" of [JHM] and specifically excluding illegitimate descendants (the 1980 trusts) both mean persons who are the biological children of [JHM]. Stated more broadly to include situations beyond the instant matters, the beneficiaries of all three trusts are persons who are biological descendants of [JHM] or descendants of [JHM] through legal adoption, subject to the limitations on adoptions described in the 1980 trusts.

3. Florida has a well-established presumption that children born during a marriage are legitimate. Its courts, however, have distinguished between legitimacy and paternity. See Daniel v. Daniel, 695 So.2d 1253 (Fl. 1997). A child born during a marriage is legitimate, but that does not necessarily mean that the child is the biological child of the husband. Ibid. A parent who is not the biological or adopted parent has no duty to support such a child, even if the child is legitimate. Ibid. Thus Florida preserves the presumption of legitimacy for children born during a marriage, but it clearly permits a challenge to a determination of paternity, subject to various limitations.

4. The Florida Supreme Court has further ruled that a final marriage dissolution judgment which establishes a child support obligation for a former spouse is a final determination of paternity for purposes of child support. D.F. v. Dep't of Revenue, No. SC96288, (Fl. Sup. Ct., June 6, 2002). [JHM] thus cannot challenge the findings that the younger children are the children of his marriage to [PAM], that the children are legitimate, and that he was (is) obligated to provide them support in accordance with the dissolution decree. Moreover, the [M] marriage dissolution decree may be a final

determination of paternity for other purposes, as between the parties and the younger children.

5. Minnesota also has the strong presumption of legitimacy for children born during a marriage and corresponding limitations as to challenges to paternity. See Minn. Stat. §§ 257.51-75 (2000) (the Minnesota Parentage Act). That presumption and statutory procedure is not, however, the only basis for determination of parentage for all purposes. In a determination of intestate succession, for example, the parentage act *may* (emphasis added) be used. Minn. Stat. § 524.2-114(2) (2000). Clear and convincing evidence of the parentage may be used regardless of the limitations of the parentage act. Estate of Palmer v. Palmer, No. C7-02-182 (Minn. Ct. App., June 18, 2002).

6. The presumption of legitimacy is not a *per se* bar to a challenge by the trustees of [JHM]'s paternity of the younger children.

7. The instant trusts are and always have been irrevocable. The trustees must execute their duties free of any control of [JHM] or the other settlors. In addition, the trustees were not parties to the [M] marriage dissolution proceedings. The trustees do not stand in any privity relationship with [JHM]. The trustees are not bound by the findings of the Florida dissolution proceedings under a doctrine of res judicata or collateral estoppel.

The Court, having reviewed the Findings and Conclusions of the Referee and all of the files and records herein and being fully advised in the premises, now

ORDERS

1. The Trustee's Motion for partial summary judgment is granted, and the beneficiaries of the instant three

trusts are persons who are biological descendants of [JHM] or descendants of [JHM] through legal adoption, subject to the adoption restrictions described in the [1980 JHM Family Trust] (C9-91-159) and the [1980 SMC Trust] (C5-91-160).

2. The trustees of the three instant trusts are authorized to conduct such proceedings and/or investigation as reasonably necessary to determine if the three children born to [PAM] during her marriage to [JHM] are the biological children of [JHM]. Such proceedings and investigation shall be conducted in such a manner as to preserve the dignity, privacy and well being of the three children in question as much as is reasonably possible. The trustees shall request any court in which the proceedings are brought to seal the court files.

3. The Motions of [PAM] and [DHM] to dismiss the Petition, to deny the trustees' Motion for partial summary judgment, and to direct that the trustees are precluded from raising the issue of paternity are all denied.

4. The original copy of this Order shall be filed in court file C6-91-166, and photocopies of this Order shall be filed in court files C9-91-159 and C5-91-160. The filing of the photocopies shall have the same force and effect as if a duplicate original copy of this order been filed in those court files.

Findings Submitted and
Order Recommended by:

s/ 6/21/02
Bruce Kruger Date
District Court Referee

s/ 6/21/02
Patricia L. Belois Date
Judge of District Court

(2)

No. 04-152

SUPREME COURT, U.S.
FILED
SEP 1 - 2004
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

A.M.P., *et al.*,

Petitioners,

v.

CWM and ACM, by PAM, and DHM,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE MINNESOTA COURT OF APPEALS

BRIEF IN OPPOSITION FOR RESPONDENTS CWM, PAM, AND DHM

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QUESTIONS PRESENTED

1. Where petitioners fail to assert any valid claim for relief—much less a federal question—in the state-court proceedings, does this Court lack jurisdiction to issue a writ of certiorari?

2. Is it a denial of due process to preclude trust beneficiaries from challenging the parent-child relationships between their father and their half-siblings when they failed to challenge the same relationships in an earlier trust proceeding involving the same parties?

3. Did the Minnesota Court of Appeals correctly determine that parent-child relationships conclusively established for all purposes cannot be challenged?

LIST OF PARTIES

Petitioners are the older six of nine children of JHM's several marriages. Petitioners are sometimes referred to herein as "the Older Children."

Respondent ACM is a minor, and appears in this litigation through PAM, his mother. DHM and CWM, sons of JHM and PAM who have reached the age of majority, are also Respondents. These three children of JHM and PAM are referred to herein as "the Younger Children."

William J. Berens (as successor to Robert J. Struyk) and Phillip H. Martin are trustees of three trusts: the JHM 1974 Trust, the 1980 JHM Family Trust, and the 1980 SMC Trust. They appear in this litigation in their capacities as trustees. They are referred to herein as the "Trustees."

By Orders of the Minnesota Court of Appeals filed on June 25, 2003 and July 21, 2003, the parties were directed to use initials or pseudonyms in their filings when referring to the parties to this matter. Accordingly, the initials used in the Minnesota appellate courts are used herein.

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RELEVANT AUTHORITY INVOLVED

Petitioners cite the due-process provision of the United States Constitution amendment XIV as the sole predicate for their Petition. However, as discussed below, Petitioners failed to properly assert any claim on their own behalf for relief in the Minnesota state-court proceedings; neither did they assert a proper due-process claim.

STATEMENT OF THE CASE

A. The Trusts

The trusts ("Trusts") created by JHM at issue here are: (1) the JHM 1974 Trust dated December 31, 1974 ("1974 Trust"); (2) the 1980 JHM Family Trust dated December 30, 1980 ("1980 JHM Trust"); and (3) the 1980 SMC, KWM and LMS Trust dated December 30, 1980 ("1980 SMC Trust").[1] These latter two trusts are also collectively referred to herein as the "1980 Trusts." The Trusts all left the class of beneficiaries open to those born after the Trusts were established. Minnesota is the situs of the Trusts.

The principal beneficiaries of the 1974 Trust are JHM's "issue." The 1974 Trust defines "issue" as:

> [A]ll persons who are descended from the person referred to, either by legitimate birth to or legal adoption by him.

The 1980 JHM Trust names JHM's grandchildren as the primary beneficiaries. The primary beneficiaries of the 1980

1. It is undisputed that JHM funded the 1980 SMC Trust and thus is the trust settlor. (Mem. in Supp. of Mot. to Dismiss dated Feb. 6, 2002, at 8-10.)

SMC Trust are JHM's children. In both 1980 Trusts, a "child" or "grandchild" is defined as "issue." The 1980 Trusts contain the identical definition of "issue":

> "Issue" means all persons who are lineal descendants of the person whose issue are referred to (including legally adopted lineal descendants and including lineal descendants in gestation, but not including step-children and foster-children of any generation) except (i) persons who become descendants by legal adoption after attaining the age of 18 years and their descendants and (ii) illegitimate descendants and their descendants.

B. JHM, PAM and Their Children

The Younger Children were born in Florida during JHM and PAM's marriage, which began in 1979 and ended in 1991. JHM is identified as the father of the children on their respective birth certificates. The Younger Children have lived in Florida since their birth, as have JHM and PAM.

JHM has six Older Children (Petitioners) from two earlier marriages. Three of the Older Children—JM, DDM, and KMR—are trustees of the two 1980 Trusts. JHM is one of several heirs to a large, closely-held company fortune. The remaining Trustees of the trusts, who commenced this action in Minnesota state court, are members of the company's law firm.

The Younger Children's parentage was first addressed in 1986, when JHM filed for divorce from PAM. In his Divorce Petition, JHM denied being the father of DHM and CWM. JHM later dismissed the divorce action, and

stipulated, in the dismissal filed with the Florida Court, that "with respect to the issues raised by him relative to the paternity of [CWM and DHM], he [JHM] hereby voluntarily dismisses his petition with prejudice."[2] (Emphasis in original.) At least two of the Petitioners had knowledge of this parentage issue in or about 1986. (Resp. Ct. of Appeals App. 63.) JHM and PAM continued their marriage for an additional five years, during which the youngest child, ACM, was born.

In 1989, the trustees of another family trust, created by JHM's grandmother, brought a petition in Minnesota state court seeking authorization to distribute many millions of dollars to all of JHM's "children," defined *inter alia* in the trust as "all legal issue". In this petition, the Younger Children (along with the Older Children) are identified as JHM's children, and as such, eligible to receive trust funds. Petitioners all received notice of this petition; none of them made an appearance or filed an objection in the proceeding. The district court found that the Younger Children are JHM's children (i.e., his legal issue), and thus beneficiaries of the trust.

JHM divorced PAM in 1991. In the divorce Settlement Agreement, incorporated within an adjudicated Judgment and Decree in Florida, JHM acknowledged that the Younger Children are his children, born of his marriage to PAM. The Settlement Agreement and Judgment and Decree conclusively resolved any issue of parentage of all the Younger Children, to the extent any such issue remained. JHM not only acknowledged the Younger Children as his and agreed to support them, but also specifically agreed that the Younger

2. Petitioners fail to mention in their statement of facts that the dismissal was with prejudice.

Children would share equally with his other children in any testamentary disposition of his assets, including assets held in trust for his benefit. He did so with knowledge they are not his natural children. Contrary to Petitioners' statement of facts, the Settlement Agreement was not simply an agreement for support—it was an adjudication of parentage under Florida law.

C. The Legal Proceedings Seeking to Eliminate the Younger Children as Trust Beneficiaries.

In 2000, at least nine years after the Younger Children's parentage had been finally and conclusively established for all purposes under Florida law, JHM was declared legally incapacitated in an action started by two of the Petitioners, KMR (a trustee of the 1980 Trusts) and SMK. Less than three months after JHM was declared legally incapacitated, the Trustees, at the behest of Petitioners, brought an action in Minnesota state district court, purportedly under Minn. Stat. § 501B.16, in which they asked the court to interpret the Trusts and determine the beneficiaries thereof.[3]

The Trustees moved for partial summary judgment construing the Trusts as limiting beneficiaries to JHM's biological children. They also asked the Court to order blood or saliva tests to resolve the question of the "parentage" of the Younger Children. Respondents moved to dismiss the petition because the Trustees lack standing to challenge the parentage of the Younger Children, which has long been established in Florida, their domicile. In the alternative,

3. Section 501B.16 permits a trustee or other interested parties to petition the court to, among other things, interpret a trust and determine the persons having an interest in the trust's income and principal. Minn. Stat. § 501B.16 (2002).

Respondents sought summary judgment based on the language of the Trusts, which does not require biology as a criteria for beneficiary status. The Older Children, as interested parties, participated in the proceedings but never sought relief themselves. They simply supported the Trustees' petition.

The district court granted the Trustees' Motion for Partial Summary Judgment, finding that beneficiaries need to be biological descendants, and denied Respondents' Motion to Dismiss, finding the Trustees have standing to challenge the paternity of the Younger Children. The district court subsequently ruled that the Younger Children are not the biological descendants of JHM unless they submit to DNA testing to establish their biological connection to him.

Recognizing this action as a paternity challenge,[4] the Minnesota Court of Appeals reversed the district court's grant of partial summary judgment to the Trustees, and ordered entry of summary judgment in favor of the Respondents. The court held that because the Younger Children's paternity had been conclusively determined under applicable parentage laws, the Trustees could not collaterally challenge the determination under the guise of seeking trust instruction under Minn. Stat. § 501B.16. The Court of Appeals explained that because the presumption of the Younger Children's parentage is now irrebuttable under both Florida and Minnesota law, the Younger Children are JHM's biological descendants as a matter of law.

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4. "As the filings in this matter make clear, the challenge to the younger children's paternity is the kernel of the trustees' petition." *In the Matter of the Trusteeship of the Trust Created Under Trust Agreement dated Dec. 31, 1974* ("12/31/74 Trust Case"), 674 N.W.2d 222, 228 (Minn. Ct. App. 2004).

The Trustees filed a petition for further review of the Court of Appeals' decision with the Minnesota Supreme Court. Petitioners also filed such a petition, despite not having filed a separate petition at the district court level or taking any action before the lower courts other than to support the Trustees' positions. The Minnesota Supreme Court denied both petitions for further review.

REASONS FOR DENYING THE PETITION

"A petition for a writ of certiorari will be granted only for compelling reasons." Sup. Ct. R. 10. Petitioners present no such reasons for this Court's review of the decision below. Indeed, the decision below does not conflict with a decision of this Court, any Court of Appeals, or any other state or federal court. It raises no question worthy of review by this Court. Instead, the decision is consistent with long-established precedent uniformly noted with approval by this Court and numerous other courts nationwide. That precedent protects the conclusive presumption of parentage for children born in wedlock from collateral attack; it fosters substantive social policies of protecting the integrity of the family and promoting legitimacy.

Moreover, Petitioners, who addressed only issues and rights asserted by the Trustees in the trial court and the Minnesota Court of Appeals, have preserved no issue for review by this Court. Further, no proper federal due-process challenge was made by Petitioners below. Even if one had been made, there is no valid basis on which to justify a challenge to the conclusively established legitimacy and parentage of the Younger Children.

I. PETITIONERS' DEMAND FOR A WRIT OF CERTIORARI SHOULD BE DENIED FOR LACK OF JURISDICTION BY THIS COURT.

In order for this Court to have jurisdiction to issue a writ of certiorari, the validity of a state statute must have been "drawn into question" on a federal ground, or a federal right must have been "specifically set up or claimed." 28 U.S.C. § 1257(a) (1993). The failure to properly raise a federal question in the state court action necessarily leaves the Supreme Court without jurisdiction. *See Hill v. California*, 401 U.S. 797, 805 (1971); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 n.16 (1983) (the Court will not "decide federal constitutional issues raised here for the first time on review of state court decisions") (quoting *Cardinale v. Louisiana*, 394 U.S. 437, 438 (1969)).

Here, Petitioners failed to properly raise any question, much less a federal question, on their own behalf before the Minnesota state courts. The Minnesota Court of Appeals decision for which Petitioners demand a writ of certiorari results from a petition filed by the Trustees pursuant to Minn. Stat. § 501B.16, which permits trustees to petition the court to determine the persons having an interest in the trust's income and principal. While they participated in the proceeding instituted by the Trustees, ***Petitioners never sought relief on their own behalf.*** Instead, before both the district court and Court of Appeals, Petitioners argued only on behalf of the Trustees' position.[5] As a result,

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5. Had Petitioners commenced their own proceeding or sought relief on their own behalf, they would have been barred by collateral estoppel due to the 1989 judicial determination that the Younger Children are JHM's legal issue. *See* discussion, *infra*.

Petitioners have no basis upon which to seek relief from this Court.[6]

Petitioners assert that they raised an issue in the Minnesota Court of Appeals proceeding as to whether their own due-process rights would be violated by a determination that JHM's parentage of the Younger Children is conclusive. Pet. at 5 n.8. They did not. Instead, the short discussion regarding "due process" in Petitioners' brief before the Court of Appeals dealt only with the *Trustees'* alleged due-process rights; Petitioners failed to raise any due-process claim on their own behalf. (Pets' Ct. of App. Br. at 15-18.)

After the Trustees lost at the Minnesota Court of Appeals, Petitioners, for the first time, attempted to raise the issue of "due-process" on their own behalf. In a three-sentence argument contained in their Petition for Further Review filed with the Minnesota Supreme Court, they said:

> On the other hand, Minn. Stat. § 501B.16 does accord standing to petition the court to determine or identify beneficiaries. Due process requires that those whose rights are to be affected be afforded an opportunity to be heard. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985); *Barton Contracting Co., Inc. v. City of Afton*, 268 N.W.2d 712, 716 (Minn. 1978). The Court of Appeals, however, declines to afford such right to the Trustees and to [Petitioners].

(Pet. for Further Rev. at 5.) Because Petitioners chose not to seek independent relief in the district court or Court of

6. Petitioners' continued participation in this action, if any, is dependent upon the Trustees' action continuing. While the Trustees have demanded a writ of certiorari, their demand is without merit and should be denied. (*See* Response to Petition for Certiorari, No. 04-97.)

Appeals, they could not raise their own alleged due-process issues before the Minnesota Supreme Court. *See Fahrendorff by & through Fahrendorff v. North Homes*, 597 N.W.2d 905, 909 (Minn. 1999).

In any event, raising a federal question for the first time in a petition for review with the highest state court is generally insufficient unless the court actually entertains the petition and expressly decides the question. *See Adams v. Robertson*, 520 U.S. 83, 89 n.3 (1997); *Hanson v. Denckla*, 357 U.S. 235, 243-44 (1958); *Radio Station WOW v. Johnson*, 326 U.S. 120, 128 (1945). Here, the Minnesota Supreme Court denied Petitioners' request for further review, and would not have entertained Petitioners' belated constitutional challenge on their own behalf even if it had accepted review. *State v. Schleicher*, 672 N.W.2d 550, 555 (Minn. 2003) (under Minnesota law, a party cannot challenge the constitutionality of a statute for the first time on appeal to the Minnesota Supreme Court). Because the Minnesota Supreme Court would not have considered Petitioners' constitutional arguments, this Court lacks jurisdiction to do so. *See Exxon Corp. v. Eagerton*, 462 U.S. 176, 181 n.3 (1983) (when constitutional issue is not decided below in a manner sufficient to bring the matter before a state appellate court, the U.S. Supreme Court lacks jurisdiction to consider the federal question). Consequently, the petition for a writ of certiorari should be denied.[7]

7. Indeed, if Petitioners had intended a constitutional challenge to the Minnesota Parentage Act, Rule 24.04 of the Minnesota Rules of Civil Procedure mandated that Petitioners notify the attorney general that the constitutionality of the Parentage Act was being drawn into question within such time as to afford the attorney general an opportunity to intervene. Petitioners did not provide the attorney general with notice of a constitutional challenge, calling into greater question whether they made such a constitutional challenge—as opposed to rhetorical flourish.

II. PETITIONERS HAVE NOT BEEN DEPRIVED OF DUE PROCESS AND THE MINNESOTA COURT OF APPEALS' DETERMINATION WAS CORRECT.

A. Petitioners' Failure to Assert Their Claimed Property Interests in a Prior Trust Proceeding Bars Them From Now Asserting a Deprivation of Due Process.

Even if there were no fatal jurisdictional flaws in Petitioners' petition, there would be no substantive basis upon which to grant their petition. Petitioners assert that they have been deprived of due process because they had no opportunity to be heard with respect to the Younger Children's status as JHM's legitimate children. This is wrong. Assuming, contrary to law, that trust beneficiaries have standing to challenge the percentage of children born in wedlock, Petitioners, who have been on notice of the facts underlying the Trustees' claims since at least 1986,[8] had the opportunity to mount a judicial challenge to the Younger Children's status as JHM's legitimate children in a 1989 proceeding. They elected not to do so, a fact confirmed by the Court of Appeals in its decision:

> In 1989, the trustees of a fourth trust, created for the benefit of JHM and not at issue here, filed a petition in Minnesota district court seeking authorization to distribute trust assets to JHM's "children," a beneficiary class defined in the trust instrument as "all [of JHM's] legal issue and adopted children." The petition, ***which was considered without objection from the older***

8. At least two of the Older Children were well aware at the time that JHM had previously denied paternity of those Younger Children then in existence.

> ***children***, identified the younger children as JHM's and therefore eligible to receive trust distributions. In granting the petition, ***the district court specifically found that [the Younger Children] were JHM's children.***

12/31/74 Trust Case, 674 N.W.2d at 226 (emphasis added). Had the district court petition been filed by Petitioners as opposed to the Trustees—who were not parties to the 1989 proceeding—Petitioners would have been bound under the doctrine of collateral estoppel by the determination in the prior proceedings that the Younger Children are JHM's legal issue and thus his lineal descendants. *See In re Trust Under Will of Holden*, 291 N.W. 104, 107 (Minn. 1940). To the extent that the Older Children are now trying independently to seek relief that was not sought in the district court or the Court of Appeals, their claims remain barred by collateral estoppel. *See In the Matter of Trusts Created by Hormel*, 504 N.W.2d 505, 509 (Minn. Ct. App. 1993).

B. Petitioners' Status as Trust Beneficiaries Gives Them No Rights With Respect to Any Parentage Determination.

Even if, contrary to law and common sense, Petitioners had been given the right to participate in the Florida divorce proceedings that conclusively determined JHM's parentage of the Younger Children, Petitioners would have had no right as trust beneficiaries to prevent JHM from acknowledging his parentage of the Younger Children. Under the Trusts, JHM retained the right to add more beneficiaries by having more children—conceiving them, acknowledging them, or

adopting them. Both acknowledgment and adoption are legislatively sanctioned methods of establishing a parent-child relationship under Florida and Minnesota law. Petitioners' claim that their due-process rights have been violated by JHM's exercise of this unfettered right to add beneficiaries pursuant to a state-sanctioned process[9] is patently unfounded. This Court has rejected arguments like Petitioners', holding that even a biological father has no due-process right to challenge a conclusive presumption of paternity arising from a state parentage act. *Michael H. v. Gerald D.*, 491 U.S. 110, 121 (1989).

In *Michael H.*, this Court confirmed that the United States Constitution does not bar a state from establishing a substantive rule of law that a child born within wedlock is the lawful child of the husband, and, under such circumstances, from deeming paternity not to be an adjudicatory fact subject to litigation other than as expressly authorized by statute:

> While §621 [California paternity statute] is phrased in terms of a presumption, that rule of evidence is the implementation of a substantive rule of law. California declares it to be, except in limited circumstances, *irrelevant* for paternity purposes whether a child conceived during and born into, an existing marriage was begotten by someone other than the husband. . . . As the Court of Appeals phrased it "The conclusive presumption is actually a substantive rule of law based upon a determination by the Legislature as a matter of overriding social policy, that given a certain relationship between the husband and wife,

9. *E.g.* the Parentage Act.

> the husband is to be held responsible for the child, and that the integrity of the family should not be impugned." Of course the conclusive presumption not only expresses the State's substantive policy but also furthers it, excluding inquiries into the child's paternity that would otherwise be destructive of family integrity and privacy.

Michael H., 491 U.S. at 119-20 (citation omitted).

Florida law, which governs the Younger Children's legal status, implements substantive polices protecting the integrity of families by making determinations of parentage conclusive for all purposes. *Knauer v. Barnett*, 360 So. 2d 399, 406 (Fla. 1978); Fla. Stat. § 742.091 (2002); Fla. Stat. § 742.011 (2002). Here, the Minnesota Court of Appeals recognized that the Younger Children's parentage and legitimacy had been conclusively determined in Florida,[10] and that the Minnesota Parentage Act extends full faith and credit to such determinations. Minn. Stat. § 257.67, subd. 1 (2002); *see also* Minn. Stat. § 257.66, subd. 1 (2002) (adjudications of parentage are "determinative ***for all purposes***") (emphasis added). The Court of Appeals' holding that Petitioners are thus barred from challenging the Younger Children's parentage is entirely consistent with *Michael H.*

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10. In a transparent effort to minimize the determinative effects of the 1991 divorce proceedings, Petitioners improperly refer to the Final Judgment of Dissolution of Marriage—by which JHM judicially acknowledged the Younger Children as his and agreed that they were to share equally with his other children in any testamentary disposition of his assets (Resp. Ct. of Appeals App. 67-72)—as a mere stipulation regarding "child support obligations." (Pet. at 3.)

Petitioners' attack on *Michael H.* is unavailing.[11] Courts in many states have recognized the pitfalls in the outcome urged by Petitioners and addressed by *Michael H.*, and, therefore, have precluded parentage challenges by persons other than the child, the mother, the father, or the putative father.[12]

11. Petitioners' attempt to distinguish *Michael H.* on the purported grounds that there were no third-party property interests at stake does not withstand scrutiny. Any determination of a parent-child relationship will necessarily affect property interests of third parties by determining the child's rights to inherit property and to receive benefits. Under Florida and Minnesota law, such third parties do not have standing to challenge a determination of parentage.

12. *See In re Trust Created by Agreement Dated Dec. 20, 1961*, 765 A.2d 746, 758 (N.J.), *cert. denied*, 534 U.S. 889 (2001) (prior adjudication of child-parent relationship bars third-party challenge to parentage, based upon language and policy of New Jersey's Parentage Act); *Knauer v. Barnett*, 360 So. 2d 399, 405 (Fla. 1978) (right to dispute legitimacy of child born in wedlock limited to husband and wife); *Weir v. Ferreira*, No. F026210 1997 Cal. App. LEXIS 1046 (Cal. Ct. App. Dec. 17, 1997) (trustees seeking to determine "issue" of trusts were barred from relitigation of question of child's parentage); *In the Matter of Estate of Lamey*, 689 N.E.2d 1265, 1268-69 (Ind. Ct. App. 1997) (child's uncle precluded from attempts to "disestablish" child's paternity for purposes of determining heirs); *Deatherage v. Phipps*, 441 P.2d 1020, 1023 (Okla. Sup. Ct. 1967) (where neither husband or wife disputed legitimacy of child born in wedlock, all others were barred from doing so); *Byrd v. The Travelers Ins. Co.*, 275 S.W.2d 861, 863-64 (Tex. Civ. App. 1955) ("If the father renounces the right to bastardize his alleged son . . . it is extinguished and can never thereafter be exercised by anyone"); *In re Paternity of Vainio*, 943 P.2d 1282, 1285 (Mont. 1997) (siblings lacked standing); *In re Saloy*, 10 So. 872, 876 (La. 1892) (if father does not dispute paternity, "the door is forever closed" to others); *Theis v. City of Miami*, 564 So. 2d 117, 119 (Fla. 1990) (employer precluded from challenging legitimacy of child born in (Cont'd)

For example, the New Jersey Supreme Court, in a case with facts very similar to those here (and as to which this Court denied certiorari), confirmed that beneficiaries of trust property—such as Petitioners here—may not seek to defeat established paternity determinations of their siblings in order to increase their proportionate share of trust assets. *In re Trust Created by Agreement Dated Dec. 20, 1961*, 765 A.2d 746, 758-59 (N.J.), *cert. denied*, 534 U.S. 889 (2001). The New Jersey decision, citing *Michael H.*, rejected the argument that such a rule of law violates the beneficiaries' due-process rights, and noted that the alleged protected interest (a purported economic right to become eligible for an unspecified share of trust proceeds) occupies a lower place in the hierarchy of rights when compared to the putative father's right to a parent-child relationship at issue in *Michael H. In re Trust Created by Agreement Dated Dec. 20, 1961*, 765 A.2d at 758-59. Petitioners have offered no compelling

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(Cont'd)

wedlock); *Gonzales v. Pacific Greyhound Lines*, 214 P.2d 809, 811 (Cal. 1950) (employer of decedent-father, collateral heirs and non-relative beneficiaries cannot question legitimacy of child born in wedlock); *Favre v. Celotex Co.*, 139 So. 904, 905 (La. Ct. App. 1932) (employer of decedent-father denied standing to dispute parentage of child born in wedlock); *Beard v. Vincent*, 141 So. 862, 863-64 (La. 1932) (collateral heirs of decedent barred from challenging parentage of children born during marriage); *Clement v. Merchants Nat'l Bank of Mobile*, 493 So. 2d 1350, 1352 n.2 (Ala. 1986) (parties questioned for not raising standing issues for collateral relative); *Speight v. Wheeler*, 310 So. 2d 716, 719 (Miss. 1974) (heirs of decedent precluding from attacking legitimacy); *Johnson v. Johnson*, 395 So. 2d 640, 641 (Fla. Dist. Ct. App. 1981) (relitigation of paternity issue resolved in divorce proceedings would be "chaotic" and to require children and former wives to submit to blood tests would be humiliating).

reasons why a contrary result should be reached here even if the issue had been properly raised below.[13]

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13. Petitioners argue that they have been deprived of their due-process right to challenge the legitimacy of the Younger Children and that such right is unaffected by various conclusive, judicial adjudications of parentage. This claim fails for two reasons. First, the Younger Children are JHM's legitimate children as a matter of law in Florida and Minnesota (by virtue of being born during wedlock). (*See* Resp. Ct. of Appeals Br. at 11, 25-30.) Petitioners have never offered any competent evidence that JHM intended any meaning for "legitimate" other than its accepted meaning under Florida and Minnesota law. And second, Petitioners **conceded** both the Younger Children's legitimacy and paternity during the state-court proceedings. *See* Pet. Ct. of Appeals Br. at 9 ("The legitimacy of Claimants . . . cannot override the fact that the Trusts require that, with the exception of legal adoption, the children must be descended in JHM's bloodline."); Resp. Ct. of Appeals App. 222 (transcript of Older Children's counsel: "paternity, as far as I can tell, is established."). There is simply no basis for Petitioners' due process claims based upon "legitimacy." The argument was never made below; if it had, it would have been found totally without merit.

CONCLUSION

For the foregoing reasons, Respondents respectfully urge the Court to deny the Petition for Writ of Certiorari.

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IN THE

Supreme Court of the United States

AMP, DDM, JM, DCM, KMR, and SMK,

Petitioners,

v.

CWM and ACM, by PAM, and DHM,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MINNESOTA COURT OF APPEALS

REPLY BRIEF

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Petitioners AMP, DDM, JM, DCM, KMR, and SMK ("Petitioners") have petitioned this Court to issue a writ of certiorari to review the decision of the Minnesota Court of Appeals reported as *In re Trusteeship of Trust Created under Trust Agreement Dated December 31, 1974*, 674 N.W.2d 222 (Minn. Ct. App. 2004), *petition for further review denied* (Minn. Apr. 20, 2004). (App. to Cert. Pet. ("App.") at A-1.) Petitioners now respectfully submit this Reply to the Brief in Opposition of Respondents CWM, PAM, and DHM ("Respondents").

Respondents devote a significant part of their brief to analysis of traditional state-law questions such as the operation of the Florida Determination of Parentage Act, Fla. Stat. ch. 742, and the common-law doctrine of collateral estoppel. This Court is not the proper forum for these questions. The proceedings in this Court do not concern paternity, parentage, or presumptions.[1] Rather, this case concerns a group of trust beneficiaries, with undisputed property interests protected by the Fourteenth Amendment Due Process Clause, whose rights will be summarily cut off

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1. This is not to say that Petitioners waive any objections to Respondents' interpretation and characterization of the state-law questions that are not before this Court. For example, Respondents claim that Florida law makes determinations of parentage "conclusive for all purposes." (Br. in Opp'n at 13.) However, neither of the statutes that Respondents cite for this proposition, Fla. Stat. §§ 742.011 and .091, states that any paternity presumption is "conclusive for all purposes" or that a child born to a married couple is presumed to be the biological issue of the couple. Also, the case that Respondents cite for the same proposition, *Knauer v. Barnett*, 360 So. 2d 399 (Fla. 1978), is a statutory-interpretation case concerning a statute, Fla. Stat. § 731.29 (1973), that has been repealed, 1974 Fla. Laws ch. 74-106, § 3.

as a result of a proceeding in a foreign state in which they had no right to participate.

In their brief, Respondents allege that there are jurisdictional defects in the Petition for Writ of Certiorari and that the Petition presents no constitutional issue worthy of consideration. In reality, Petitioners have satisfied all requirements for invoking this Court's jurisdiction. Moreover, as Petitioners demonstrated in the Petition, the court of appeals' decision will deprive them of their property without due process unless the decision is reversed, and courts in different states are misinterpreting and misapplying this Court's decision in *Michael H. v. Gerald D.*, 491 U.S. 110 (1989), to the detriment of trust beneficiaries' property rights, which are protected by the Fourteenth Amendment.

I.

THIS COURT HAS JURISDICTION TO GRANT THE PETITION FOR WRIT OF CERTIORARI.

Respondents have challenged this Court's jurisdiction to consider and grant the Petition for Writ of Certiorari. Because Petitioners have satisfied all the jurisdictional requirements for filing their Petition, Respondents' claims are without merit.

A. Petitioners were proper parties to the trust proceeding.

The Trustees started this action with a Petition for Order to Determine Beneficiaries under Minn. Stat. § 501B.16. That statute provides that "a **person interested** in the trust" may petition the district court for, among other things, an

order "to determine the persons having an interest in the income or principal of the trust and the nature and extent of their interests." Minn. Stat. § 501B.16(3) (emphasis added). Under Minnesota law, a person with an interest in a trust, such as a beneficiary, may participate as a separate party, independent of the trustee, in a proceeding under section 501B.16 commenced by the trustee. *See, e.g., In re Trust Created by Hill*, 509 N.W.2d 168, 172 (Minn. Ct. App. 1993).

Petitioners are beneficiaries of the Trusts at issue in this matter. Accordingly, Petitioners appeared in this action, were represented by their own counsel, and submitted separate briefing to the district court and the court of appeals. Petitioners' appearances at all stages of the trust proceeding are noted in the record. (App. A-1, A-21, & A-31.) Therefore, as persons who each have an interest in the Trusts, Petitioners were proper parties to the trust proceeding.

The Supreme Court Rules provide: "All parties to the proceeding in the court whose judgment is sought to be reviewed are deemed parties entitled to file documents in this Court." Sup. Ct. R. 12.6. "Parties interested jointly, severally, or otherwise in a judgment may petition separately for a writ of certiorari." Sup. Ct. R. 12.4. Because Petitioners were proper parties to the trust proceeding, Petitioners have standing to file documents in the Court, including a petition for a writ of certiorari.

B. Petitioners properly raised the federal constitutional question in the proceedings below.

In their separate brief filed with the Minnesota Court of Appeals, Petitioners cited authority from this Court holding that "[d]ue process requires that those whose rights are to be

affected be afforded an opportunity to be heard" and argued that any determination of the rights of beneficiaries based on a foreign proceeding in which neither the beneficiaries nor the trustees had the right to participate would constitute a fundamental denial of due process. (Cert. Pet. at 5 n.8 (quoting brief).) Petitioners made the same Fourteenth Amendment due-process argument in their separate Petition for Further Review to the Minnesota Supreme Court. (*Id.* at 6 n.10 (quoting brief).) Therefore, Petitioners, independent of the Trustees, properly raised the federal question in the proceedings below.

Respondents characterize Petitioners' briefing of the federal question as "short" and insufficient. (Br. in Opp'n at 8.) But Respondents' claim is unpersuasive in light of this Court's opinion in *Braniff Airways, Inc. v. Nebraska State Board of Equalization & Assessment*, 347 U.S. 590 (1954). There, the petitioner timely raised its contention that its property was not taxable by the State of Nebraska because the property had attained no taxable situs in that state. *Id.* at 599. However, the petitioner erroneously based its contention on the Commerce Clause instead of the Fourteenth Amendment Due Process Clause. *See id.* at 598-99. This Court nonetheless considered the due-process argument:

> While the question of whether a commodity en route to market is sufficiently settled in a state for purpose of subjection to a property tax has been determined by this Court as a Commerce Clause question, the bare question of whether an instrumentality of commerce has tax situs in a state for the purpose of subjection to a property

> tax is one of due process. However, appellant timely raised and preserved its contention that its property was not taxable because such property had attained no taxable situs in Nebraska. Though inexplicit, we consider the due process issue within the clear intendment of such contention and hold such issue sufficiently presented.

Id. (citing *New York ex rel. Bryant v. Zimmerman*, 278 U.S. 63, 67 (1928)) (footnotes omitted). Here, Petitioners' brief to the court of appeals and Petition for Further Review to the Minnesota Supreme Court show Petitioners' clear intent to ask the state courts to consider the Fourteenth Amendment due-process implications of holding that the earlier Florida proceeding—in which Petitioners had no right to participate—is binding on the Trusts and the beneficiaries. In light of *Braniff Airways* and other opinions of this Court,[2] Petitioners properly raised the due-process issue in the proceedings below and, therefore, preserved the issue for consideration by this Court.

C. The fact that Petitioners agreed with the Trustees does not deprive Petitioners of their right to seek relief from this Court.

Respondents claim that because Petitioners supported the Trustees' position, Petitioners somehow were not seeking relief on their own behalf and, therefore, have preserved no issue for review by this Court. (Br. in Opp'n at 7.)

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2. *See, e.g.*, *Chambers v. Mississippi*, 410 U.S. 284, 290 n.3 (1973) (addressing due-process argument despite state supreme court's failure to address argument when it was clear from the record petitioner repeatedly raised constitutional claim in lower courts).

Respondents cite no authority from this Court that expressly supports such a claim.[3]

Petitioners sought relief on their own behalf because they were represented by independent counsel and submitted separate briefing to the district court and court of appeals that demanded relief in their own right. (*See, e.g.*, Br. of Resp. Beneficiaries AMP, et al. to Minn. Ct. App. at 36.) The fact that Petitioners found merit in the Trustees' position does not deprive Petitioners of their right to petition this Court to reverse the decision of the court of appeals, nor does it

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3. Respondents make several unpersuasive arguments under Minnesota law in support of this claim. For example, Respondents maintain that Petitioners could not, on their own behalf, have "mount[ed] a judicial challenge to the [Respondents'] status as JHM's legitimate children" because of the doctrine of collateral estoppel. (Br. in Opp'n at 10-11.) Respondents furthermore claim that Petitioners "could not raise their own alleged due-process issues before the Minnesota Supreme Court." (*Id.* at 9.) First, Respondents did not raise these or any other preclusion arguments in their Opposition to Petitions for Further Review submitted to the Minnesota Supreme Court. On the contrary, in their brief to the Minnesota Supreme Court Respondents argued the merits of Petitioners' due-process claim, stating that this Court "has specifically rejected this [due-process] argument" and citing *Michael H. v. Gerald D.*, 491 U.S. 110 (1989), as authority. (Opp'n to Pets. for Further Review at 3.) Second, the court of appeals based its decision only on the effect of the 1991 Florida divorce proceeding (App. A-13) and not on the 1989 Minnesota trust matter that Respondents argue bars Petitioners' claim (Br. in Opp'n at 10). As the court of appeals stated in its opinion, the 1989 trust matter concerned a fourth trust that is "not at issue here." (App. A-4.) Thus, the 1989 trust matter and Respondents' preclusion arguments under state law are immaterial to the proceedings before this Court, which concern only Petitioners' federal due-process challenge to the decision of the court of appeals.

deprive the Court of jurisdiction to consider Petitioners' due-process arguments.

The Supreme Court Rules provide that "[p]arties interested jointly, severally, or otherwise in a judgment may petition **separately** for a writ of certiorari." Sup. Ct. R. 12.4 (emphasis added). Petitioners have an interest in the judgment of the court of appeals because, to the extent that it requires payment of distributions to persons who are not proper beneficiaries of the Trusts, the judgment deprives Petitioners of their property without due process. *See Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) ("[T]he fundamental requisite of due process of law is the opportunity to be heard." (quotation omitted)). Petitioners' property interest is entirely distinct from the Trustees' property interest. Thus, contrary to Respondents' claim (Br. in Opp'n at 8 n.6), Petitioners' participation in this matter is not dependent on the Trustees' continued participation.

In the final analysis, Petitioners properly raised their due-process argument below and are entitled to seek relief in this Court. Therefore, there is no jurisdictional defect in the Petition for Writ of Certiorari.

II.

THE PETITION PRESENTS IMPORTANT QUESTIONS OF CONSTITUTIONAL LAW THAT HAVE NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

Respondents claim that the Minnesota Court of Appeals' decision raises no question worthy of review and is consistent with long-established precedent. (Br. in Opp'n at 6.) Respondents' claim is belied by the undisputed facts.

The court of appeals held that to the extent that the 1991 Florida divorce proceeding determines by operation of law the paternity of DHM, CWM, and ACM, such a determination is binding on the Trusts. (App. A-15.) The court of appeals' opinion concluded—and Respondents do not dispute—that Petitioners had no right to participate in the 1991 Florida divorce proceeding. (App. A-11; Br. in Opp'n at 11.) Respondents furthermore cannot—and do not—dispute that Petitioners have a property interest in the Trusts, protected by the Fourteenth Amendment Due Process Clause. *See Mullane*, 339 U.S. at 313-14. Respondents likewise cannot—and do not—dispute that paying distributions to people who are not proper beneficiaries improperly depletes the Trusts' assets and deprives not only Petitioners but also all proper beneficiaries of their property interests. Therefore, the court of appeals' decision deprives Petitioners of their property without due process of law and in violation of the Fourteenth Amendment.

In addition to the due-process implications of the court of appeals' decision, which are worthy of consideration in their own right by this Court, this case presents other important questions, namely the scope and applicability of

this Court's decision in *Michael H. v. Gerald D.*, 491 U.S. 110 (1989). In holding that Petitioners could not ask the district court to determine the proper beneficiaries of the Trusts because of the effect of the Florida proceeding, the court of appeals cited to and relied on *In re Trust Created by Agreement Dated December 20, 1961*, 765 A.2d 746 (N.J. 2001) ("*In re Johnson Trust*"). (App. A-16.) There, the New Jersey Supreme Court, relying **exclusively** on *Michael H.*, rejected a due-process claim made by a trust beneficiary. 765 A.2d at 362-63. But, as Petitioners have shown, the instant case and *Michael H.* are not comparable. (Cert. Pet. at 9.) Thus, state courts have misunderstood and misapplied *Michael H.* Therefore, the meaning and scope of *Michael H.*, especially when that case is applied in matters such as this where the property interest is so great, are important questions of constitutional law that can only be settled by this Court.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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